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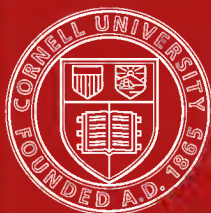
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The assessors, collectors and town clerk



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THE  
ASSESSORS,  
Collectors and Town Clerk's  
MANUAL:

CONTAINING

A FULL AND ACCURATE EXPOSITION OF THE LAW  
RELATING TO THE POWERS AND DUTIES  
OF THESE OFFICERS,

WITH AN

APPENDIX OF FORMS.

---

By ISAAC GRANT THOMPSON,

COUNSELOR-AT-LAW, AUTHOR OF "LAW OF HIGHWAYS,"  
"SUPERVISOR'S MANUAL," ETC.

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FIFTH EDITION—INCLUDING STATUTES TO 1876.

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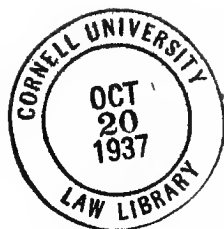
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# ASSESSOR'S MANUAL.

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## CHAPTER I.

### ASSESSORS.

#### SECTION 1. Election, qualification and general duties.

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### SECTION I.

#### ELECTION, QUALIFICATION AND GENERAL DUTIES.

The Revised Statutes provide that there shall be elected at the annual town meeting, in each town, one assessor (1 R. S. 340, as amended 1866, chap. 30), who shall hold his office for three years, and until a successor shall be duly elected and appointed. Laws 1845, chap. 180, §§ 2 and 4, as amended 1847, chap. 455. In the event of the erection of a new town, three assessors are to be elected at the first annual meeting, who are to be divided, by lot, by the canvassers, upon the result of the canvass, into three classes, to be numbered one, two and three ; the term of office of the first class shall be one year, of the

second, two, and of the third, three ; and one assessor only shall thereafter annually be elected in such town, who shall hold his office for three years, and until a successor shall be duly elected or appointed. But in case any assessor shall be elected to fill a vacancy, he shall hold the office only for the unexpired term which shall become vacant ; and if two vacancies shall be required to be filled, the canvassers shall, after the canvass, determine by lot, as aforesaid, the terms they shall respectively hold. Laws 1845, chap. 80, as amended 1847, chap. 455.

Assessors are to be chosen by ballot, and no person is eligible to the office, unless he be an elector of the town for which he is chosen. 1 R. S. 345.

*To take oath.* Every person chosen or appointed to the office of assessor, before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace or commissioner of deeds, the oath of office prescribed in the sixth article of the Constitution of this State. 1 R. S. 345. Such oath shall be administered without reward, and the justice or commissioner before whom the same shall be taken shall also, without reward, certify in writing the day and year when the same was taken, and shall deliver such certificate to the person by whom the oath was taken. Id. The oath may also be subscribed and sworn before the town clerk of the town in which such office shall be elected. Such oath shall be administered and certified without fee or reward. Laws 1838, chap. 172. Acts designating

persons to administer the oath of office to officers, are held to be merely directory. 3 Hill, 42; 4 E. D. Smith, 430. The assessor taking the oath, within eight days thereafter, shall cause the certificate to be filed in the office of the town clerk. 1 R. S. 345. If any person chosen assessor shall not take and subscribe such oath, and cause the certificate thereof to be filed as above required, such neglect shall be deemed a refusal to serve. Id. But if he enters upon the duties of his office before he shall have taken such oath, he shall forfeit to the town the sum of fifty dollars. 1 R. S. 347. If his name appears on the poll list, that is to be deemed a sufficient notice of his election; but if not, he is entitled to a notice of his election from the town clerk of the town, within ten days after the meeting at which he is chosen. See Form 1.

*Penalty for refusing to serve.* If any person chosen or appointed assessor shall refuse to serve, he shall forfeit to the town the sum of fifty dollars. 1 R. S. 347.

But no Quaker, or reputed Quaker, chosen or appointed to the office of assessor, shall be liable to such penalty, if he shall affirm, within three days after receiving notice of his election or appointment, that he has conscientious scruples about executing the duties of said office.

Such affirmation shall be made before some one of the justices of the town, who shall, without reward, certify in writing, the day and year when the same was taken, and deliver such certificate to the person

by whom such affirmation was made, and such person, within eight days thereafter, shall cause said certificate to be filed in the office of the town clerk. 1 R. S. 347.

Where a person elected to the office shall have incurred the above penalty, by refusing to serve, he cannot be again appointed. 11 Johns. 432.

*Resignation.* Should any assessor desire to resign his office, he may give notice of his intention so to do to any three justices of the peace of the town, who may, for sufficient cause shown, accept the resignation. 1 R. S. 348.

Neither the resignation nor acceptance need be in writing. 3 Hill, 243.

*Vacancies, how filled.* When any vacancy shall happen in the office of assessor by death, removal, resignation, neglect to qualify, or refusal to serve, it shall be supplied, until the next succeeding annual town meeting, by an appointment in writing, under the hands of any three justices of the peace, or two justices and the supervisor of the town. Laws 1845, chap. 180, §§ 2 and 4, as amended 1847, chap. 455.

The provision of the statute for calling a special meeting to fill vacancies is superseded by the above act. For order appointing, see Form No. 2.

If any town shall neglect, at its annual town meeting, to choose an assessor, it shall be lawful for any three justices of the peace of the said town, by warrant under their hands and seals, to appoint such officer; and the person so appointed shall hold his

office until another is chosen or appointed in his place, and shall have the same powers and be subject to the same duties and penalties, as if he had been duly chosen by the electors. 1 R. S. 347 ; Laws of 1874, ch. 543, § 31.

But if the justices of the peace fail to so appoint, it shall be the duty of the town clerk, within thirty days thereafter, to call a special town meeting for the purpose of electing an assessor. Laws of 1874, ch. 543, § 31.

The justices making such appointment must cause such warrant to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed. 1 R. S. 348, § 57.

The justices cannot appoint one of their own number. 33 Barb. 287. Where the justices acquire jurisdiction, their appointment cannot be questioned collaterally. 6 Johns. 69 ; 5 Denio, 409.

An assessor appointed to fill a vacancy holds to the next annual town meeting after his appointment, and not for the balance of the term to which he is appointed ; but if at an annual town meeting there are two vacancies to be filled, the persons elected will hold for the unexpired term.

*List of, to be returned to supervisors.* The clerks of the cities of New York, Albany, Hudson, Schenectady and Troy, and the town clerks of the several towns, shall yearly, before the first day of October in each year, certify and deliver to the supervisors of their respective towns, the names of all the assessors and collectors in their respective cities and towns, and the same shall be delivered to the board of supervisors at their next meeting. 1 R. S. 418, § 1.

*Compensation of.* Assessors are entitled to the sum of two dollars for each day actually and necessarily spent in the discharge of their official duties. Laws of 1870, ch. 242.

## SECTION II.

## THEIR DUTY AS FENCE VIEWERS.

The assessors and commissioners of highways elected in every town shall, by virtue of their offices, be fence viewers of their town. 1 R. S. 340.

The duties of fence viewers pertain to division and other fences, to floating timber, to strays, and to sheep killed by dogs. These duties will be described in the order in which they are stated.

The statute provides that where two or more persons shall have lands adjoining, each of them shall make and maintain a just and equal proportion of the division fence between them, in all cases where one-half or more of each of such adjoining farms or lands shall be cleared or improved. 1 R. S. 353, § 30, as amended 1866, chap. 540.

The provisions of this statute are not limited to *owners*, but are for the benefit of any persons interested — as tenants. *Bronk v. Becker*, 17 Wend. 320.

Where two or more persons shall have lands adjoining, and not within the provisions of section thirty of said article, as hereby amended, each of them shall make and maintain a just and equal proportion of the division fence between them, except the owner or owners of either of the adjoining lands shall choose to let such land lie open to the public. If he shall afterward inclose it, he shall refund to the owner of the adjoining land a just proportion of the value, at that time, of any division fence that shall have been made and maintained by such adjoining owner, or he

shall build his proportion of such division fence. *Bronk v. Becker*, 17 Wend. 320.

Before a party can claim that he has chosen to let his lands lie open to the public, he must give the adjoining owners, or the fence viewers, notice that he has so chosen, upon his being requested to build his share of the fence. The fact that he has never fenced his land, and has only used it for a wood and timber lot, will not establish that he has elected to let the same lie open. *Perkins v. Perkins*, 44 Barb. 134.

There must be some act that amounts to a license to the people of the town, to go upon it and allow their cattle to feed upon it without being trespassers. *Id.*

Where a person shall have a farm or land lying open, one-half or more of such farm or land being cleared or improved, he shall refund to the owner of the adjoining land a just proportion of the value at the time this act shall take effect, of any division fence that shall have been made and maintained by such adjoining owner, or he shall build his proportion of such division fence. 1 R. S. 353, § 32, as amended Laws 1866, chap. 540.

The Revised Statutes (1 R. S. 353, § 32) provides, that two of the fence viewers might determine the value of the fence already built, where an owner inclosed his lands after letting them lie open. See *Hewitt v. Watkins*, 11 Barb. 409. But the section quoted above, substituted for the thirty-second section, makes no such provision, and the value can probably only be recovered by action.

*Disputes, how settled.* If dispute arises between the owners of adjoining lands, concerning the proportion or particular part of fence to be maintained or made by either of them, such dispute shall be settled by any two of the fence viewers of the town. 1 R. S. 353.

The only disputes which fence viewers are empowered to settle, are such as respects the proportion or particular part of the fence which is to be maintained or made by the respective owners of adjoining lands. Where one of the parties is bound by grant, covenant, presumption, or in any other way, to build the whole of the fence, the fence viewers have no jurisdiction. *Adams v. Van Alstyne*, 25 N. Y. 232.

This statute is for the benefit of tenants as well as owners, and they may take the same proceedings as land owners for an apportionment of a division fence. *Bronk v. Becker*, 17 Wend. 320.

*Proceedings.* When any of the above mentioned matters shall be submitted to fence viewers, each party shall choose one; and if either neglect, after eight days' notice, to make such choice, the other party may select both. 1 R. S. 353.

The fence viewers shall examine the premises, and hear the allegations of the parties. In case of their disagreement, they shall select another fence viewer to act with them, and the decision of any two shall be final upon the parties to such dispute, and upon all parties holding under them.

The decision of the fence viewers shall be reduced to writing, shall contain a description of the fence, and of the proportion to be maintained by each, and

shall be forthwith filed in the office of the town clerk.  
1 R. S. 354. See Form 3.

*On sale of land.* Where two or more persons shall own lands adjoining, in case either of them shall sell, convey or devise such lands, or any portion thereof, the owner of any division fence that shall have been theretofore made and maintained by him, shall not be deprived of his interest therein in consequence of such sale, except so far as it relates to the grantor; and in all cases where such sale or devise shall interfere with or affect the division fences existing between such adjoining owners at the time of such sale, or on receiving such devise, a subdivision of such division fence shall then be made by all the adjoining owners affected thereby, and each adjoining owner shall refund to the owner of the adjoining land a just proportion of the value at the time of such sale, or on receiving such devise, of any division fence that shall have been theretofore made and maintained by such adjoining owner, or that shall have been made and maintained by the persons from whom he received such title, or the adjoining owner shall build his proportion of such division fence. The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be built by him, shall be determined by any two of the fence viewers of the town. Laws 1866, chap. 540.

The statute empowering fence viewers to fix the just proportion of the fence to be maintained, refers to the state of things existing when they are called upon to act, and has no relation to any former owner-

ship of the adjoining property. The just proportion of the fence is, of course, changed whenever a change takes place in the extent which each owner has in the lands which adjoin, and then a new adjustment becomes necessary. *Adams v. Van Alstyne*, 25 N. Y. 232.

*Neglect to build.* If such neglect or refusal shall be continued for the period of one month after request in writing, to make or repair such fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him, with costs of suit. 1 R. S. 354.

An appraisement by the viewers is not necessary under this section. *Bronk v. Becker*, 17 Wend. 320.

*When fence may be removed.* If any person who shall have made his proportion of a division fence shall be disposed to remove his fence and suffer his land to lie open to the public, he may do so, provided such farm or lands are not one-half or more cleared or improved, at any time between the first day of November in any one year, and the first day of April following, but at no other time, giving ten days' notice to the owner or occupant of the adjoining land of his intention to apply to the fence viewers of the town for permission to remove his fence; and if, at the time specified in such notice, any two of such fence viewers, to be selected as aforesaid, shall determine that such fence may with propriety be removed, he may remove the same. 1 R. S. 354, as amended 1866, chap. 540.

If any such fence shall be removed without such notice and permission, the party removing the same,

shall pay to the party injured, all such damages as he may sustain thereby, to be recovered, with costs of suit: 1 R. S. 354, as amended 1866, chap. 540. .

The only effect of a permission from the fence viewers to remove the fence, is to remit the parties to their common law rights ; and if the cattle of the owner so removing his fence pass through the opening on to the land of his neighbor, he is liable for the damages committed by them. *Holladay v. Marsh*, 3 Wend. 142.

*Fences destroyed by floods.* Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereunto required by any person interested therein. Such requisition shall be in writing, and signed by the party making it.

If such person shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same, at the expense of the party so refusing or neglecting, to be recovered from him, with costs of suit. 1 R. S. 354.

*Examination of witnesses — costs.* Witnesses may be examined by the fence viewers on all questions submitted to them ; and either of such fence viewers shall have power to issue subpoenas for, and to administer oaths to said witnesses, and each fence viewer and witness thus employed shall be entitled

to one dollar and fifty cents per diem ; such fence viewers or a majority of them, shall determine what proportion thereof shall be paid by each of the parties interested in such division fence, and reduce their determination to writing, and subscribe the same and file it in the office of the town clerk where such fence viewers shall reside ; the party refusing or neglecting to pay such fence viewers, or either of them, shall be liable to be sued for the same, with costs of suit. 1 R. S. 355, as amended, chap. 540. For forms of subpoena and determination, see Forms Nos. 3 and 4.

*When damages may be recovered.* If any person liable to contribute to the erection or reparation of a division fence, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall not be allowed to have and maintain any action for damages incurred, but shall be liable to pay to the party injured all such damages as shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the said land, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs of suit ; which appraisement shall be reduced to writing, and signed by the fence viewers making the same, but shall be only *prima facie* evidence of the amount of such damages. Laws 1838, chap. 261.

Though not in terms an amendment of the Revised Statutes, yet in fact it is a substitute for section thirty-seven of the statute on division fences, and is

here given in place of that. The fence viewers are limited in their action under the above section, to the damages occurring to the lands, crops, fruit trees, etc., and they cannot assess the value of cattle which escape through a defective fence into a cornfield, and eat so much corn that they die. *Clark v. Brown*, 18 Wend. 213.

If an owner permit his portion of the division fence to get out of repair, and the cattle of the adjoining owner escape from his field through such defective portion of the fence, and damage the former, he can recover no damage, as he contributes to the injury by not keeping his fence in repair. *Cowles v. Balzer*, 47 Barb. 562.

Whenever the electors of any town shall have made any rule or regulation, prescribing what shall be deemed a sufficient fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation, shall be precluded from recovering compensation in any manner, for damages done by any beast lawfully going at large on the highways, that may enter on any lands of such person, not fenced in conformity to the said rule or regulation, or for entering through any defective fence. 1 R. S. 355.

The statute of 1867 (chap. 814), practically repeals this section, by rendering it unlawful for any cattle, etc., to run at large in the highways, at any time.

*Presumption of sufficiency.* When the sufficiency of a fence shall come in question in any suit, it

shall be presumed to have been sufficient until the contrary be established. 1 R. S. 356

*Compensation of fence viewers.* Each fence viewer is entitled to receive one dollar and fifty cents per day for the time occupied in relation to fences, and they are to determine what proportion thereof shall be paid by each of the parties interested in such division fence, and reduce their determination to writing, and subscribe the same and file it in the office of the town clerk where such fence viewers shall reside; the party refusing or neglecting to pay such fence viewers, or either of them, shall be liable to be sued for the same, with costs. 1 R. S. 355, as amended 1866, chap. 540.

*As to floating timber.* The duty of fence viewers, as to floating timber, is prescribed in the Revised Statutes as follows:

Whenever any logs, timber, boards or plank in rafts or otherwise, shall have been drifted upon any island in any of the waters within this State, or upon the bank or shore of any such waters, the owner of such logs or other lumber, may take the same away, on his first paying or tendering to the owner or possessor of the land on which the same shall have been drifted, the amount of the damages which such owner or possessor shall have sustained by reason thereof, and which may accrue in the removal of such logs or other lumber. 1 R. S. 697.

If the parties cannot agree as to the amount of such damages, either party may apply to any two

of the fence viewers of the town or city in which such lumber may be found, whose duty it shall be, after hearing the proofs and allegations of the parties, to determine the same, at the expense of the owner of the lumber, and their decision shall be conclusive. 1 R. S. 697.

The fence viewers, or either of them, shall have power to issue process for such witnesses as may be desired by either party, and to administer oaths to all witnesses produced before them. Id.

In case the owner does not appear within a prescribed time the statute authorizes the timber to be sold, and directs that a portion of the proceeds be paid to the owner of the lands for damages. But it provides, that, before such money be paid, such damages shall be assessed by any two fence viewers of the city or town, and a specification thereof, signed by such fence viewers, shall be filed in the office of the clerk of the city or town. 1 R. S. 899, § 9.

The above provisions do not apply to that kind of lumber called drift-wood. Id. § 21.

*In relation to strays.* There are two methods prescribed by statute for the recovery of damages occasioned by cattle straying into an inclosure. That prescribed by chapter 814 of the Laws of 1867, providing for the summary seizure and disposition of such cattle; and that provided by the Revised Statutes given below. These remedies are concurrent, and every person damaged may resort to either, at his discretion. The provisions of the Revised Statutes regarding strays, are as follows :

Whenever any person shall at any time have any strayed horse upon his inclosed land, or shall, between the first day of November in any year, and the first day of April thereafter, have any strayed neat cattle or sheep upon his inclosed lands, such person shall, within ten days after the coming of any such stray thereon, deliver to the clerk of the town within which such lands shall be, a note in writing, containing the name and place of abode of such person, and the age, color and marks, natural and artificial, of each stray, as near as may be. 1 R. S. 351, § 17.

If any person upon whose inclosed lands any such neat cattle, horses or sheep, shall come, shall neglect to deliver such note in writing, to the town clerk, within the time above required, he shall be precluded from the benefits of this article, and from all claim to compensation for keeping such strays. Id. § 18.

The town clerk, on the receipt of every such note, shall enter the same at large in a book to be provided by him for that purpose; for which entry he shall receive six cents each for all neat cattle and horses, and three cents for each sheep, to be paid by the person delivering the note. Id. § 20.

The book in which such entries shall be made shall always be kept open to inspection; and no fee shall be taken by the clerk for any search therein. Id. § 20.

The person delivering the note shall be entitled to receive therefor nine cents each, for all neat cattle and horses, and three cents for each sheep described in the note; and he may detain such strays until the

owner thereof shall appear and pay such fees, together with the fees paid or due to the clerk, and all reasonable charges for keeping the strays; such charges being first ascertained by two of the fence viewers of the town, to be selected by the person claiming the same, in case he and the owner of the stray cannot otherwise agree. 1 R. S. 351, § 21.

Each fence viewer shall be entitled to receive six cents for every mile he shall be obliged to travel, from his house to the place where such strays are kept, and twenty-five cents for a certificate of the charges as ascertained by him; such fees to be paid by the owner of the strays. Id. § 22.

Every person who shall deliver any such note, and keep any stray described therein, shall, if the same be not sooner claimed and redeemed, between the first day of May and the twentieth day thereafter, give notice to one of the fence viewers of the town, whose duty it shall be to ascertain, according to the best of his knowledge and judgment, the reasonable charges of keeping such stray, a certificate whereof shall be given by him to the person applying for the same. The fence viewer shall be entitled to the like fees as above provided, to be paid by the person applying for the certificate. Id. § 23.

If no owner shall appear to claim such stray, on or before the first day of May next after the making of such entry, or if the owner shall refuse or neglect to pay the sums charged on such stray, then the person who shall have delivered such note, and kept such stray, may proceed to sell the same by public auction, to the highest bidder. Id. § 24.

Such person shall give at least twenty day's previous notice of the time and place of such sale, by advertisement, to be posted up at three of the most public places in the town where the strays shall have been kept. 1 R. S. 351, § 25.

Out of the moneys arising from such sale he shall retain for his own use the sums charged on such strays for the aforesaid note in writing, entry and certificate, together with the sum specified in the certificate for keeping such strays, and the like charges for such sale as are allowed on sales under executions issued out of justices' courts. He shall pay the residue of said moneys, on demand, to the owner of the strays, if he shall appear to demand the same. Id. § 26.

If the owner shall not appear and demand the residue of such moneys, within one year after the sale, he shall be forever precluded from recovering any part of such moneys; and the aforesaid residue shall be paid to the supervisor of such town, for the use of the town; and his receipt shall be a legal discharge to the keeper of such strays. Id. § 27.

If the person who shall have sold such strays, shall not, within thirty days after the expiration of the year, pay such residuary moneys to the supervisor of the town, he shall forfeit to the town double the sum so remaining in his hands, together with the amount of such residuary moneys. Id. § 28.

Each of the cities of this State shall be considered towns for the purposes of this article. Id. § 29.

*In relation to sheep killed by dogs.* It is also the duty of fence viewers to assess, when required, the damage arising from the killing of sheep by dogs. That part of the statute relating to such duties is as follows :

The owner of any sheep or lambs that may be killed or injured by any dog, may apply to any two fence viewers of the town, or assessors of the city, or of the ward of the city, who shall inquire into the matter, and view the sheep injured or killed, and may examine witnesses in relation thereto, for which purpose either of them shall have power to administer oaths. If they are satisfied that the same were killed or hurt only by dogs, and in no other way, they shall certify such fact, the number of the sheep killed or hurt, and the amount of the damages sustained thereby by the owner, together with the value of the sheep hurt or killed. 1 R. S. 704, § 10, as amended 1862, chap. 244. See Form No. 5.

*Their certificate evidence.* The said certificate shall be presumptive evidence of the facts therein contained, in any suit that may be brought by the party injured against the owner or possessor of any dog, if it shall appear on the trial of such suit that notice in writing of the time and place of such view shall have been served at least twenty-four hours before, on the said owner or possessor, either personally or by leaving at his dwelling-house with a person who usually dwells therein, and who shall have arrived at the age of sixteen years. Id. § 11.

In addition to the provisions of the Revised Stat-

utes, there was an act passed in 1864 (chap. 197) relating to tax upon dogs in Ontario county, which contained a provision that such act may be extended to any county, by a resolution to that effect passed by the supervisors of such county. Among the provisions of that act are the following :

The owner or owners of any sheep or lambs that may be killed or injured by dogs may apply to any two fence viewers of the town, who shall inquire into the matter and examine witnesses in relation thereto, for which purpose either of them shall have power to administer oaths, and if they shall be satisfied that the same were killed by dogs and in no other way, they shall certify such fact, the number of such sheep killed and the number injured, the value of the sheep killed or injured immediately previous to such killing or injury, together with the value of the sheep after being killed or injured, together with the amount of their fees. Laws 1864, chap. 197, § 3.

Such certificate shall be presented to the board of town auditors, at their annual meeting for auditing town accounts, who shall have the same power in auditing or allowing the same as in regard to town accounts, and if such board shall be satisfied, by the oath of the person claiming such damages, that such claimant has not been able to discover the owner or possessor of the dog or dogs by which such damage was done, or that he has failed to recover his damages of such owner or possessor, they shall give an order on the supervisor of the town for the amount which they shall allow, who shall pay such order out of the funds arising from the provisions of this act. Id. § 4

## SECTION III.

## DUTY UNDER THE ELECTION LAW AND AS COUNTY CANVASSERS.

It is the duty of the assessors, supervisor and town clerk of a town, to divide the town into election districts, where that alteration has not been already made, and to alter such district when made, as often as may be necessary. Although the first section of the statute cited below is merely temporary in some respects, yet it contains the manner in which these officers are to proceed, and is, therefore, cited complete.

*When may divide town into districts.* The supervisor, assessors and town clerk of each town shall meet at the town clerk's office in such town, on the first Tuesday in September next, at ten o'clock in the forenoon, and form themselves into a board. And in case a majority of said officers, for any cause, do not attend on that day, it shall be the duty of those who do attend, to adjourn to some future day, not exceeding five days, and shall immediately thereupon give notice to those officers who do not attend, of the time of such adjournment; and it shall be the duty of all said officers to attend on such adjourned day, and to proceed in the same manner as though a majority had attended on the day appointed by law; and adjournments from time to time may be had by said officers, as occasion may require; but no such adjournments shall extend beyond the first day of October in said year. They shall, in all cases where any town shall

contain more than five hundred electors, divide the same into a convenient number of election districts, so that each district shall be in a compact form within their town, and shall contain not more than five hundred electors, as far as the number can be ascertained. But where any town shall contain less than five hundred electors, the board may, in their discretion, divide the same into districts. They shall make a certificate of such division, under their hands, in which such districts shall be numbered and described by known boundaries, which shall be immediately filed in the office of the town clerk. The town clerk shall, at least two weeks before the day of election, put up copies of the said certificates in at least four public places in each of the said districts, within ten days after such meeting; and he shall deliver a copy thereof to an inspector in each district before the day of election. Laws 1842, chap. 130, tit. 3, art. 3. See Form No. 6.

*Alteration of districts.* In every succeeding year the same officers shall meet at the town clerk's office, on the first Monday of October, at ten o'clock in the forenoon, and form a board. They shall determine whether any alteration in the existing election districts be necessary or expedient, and shall have power to make the same, subject to the same restrictions and limitations contained in the last preceding section; and shall, in like manner, make a certificate of such alterations, exhibiting the districts as altered and their numbers respectively; which certificate shall be filed in the town clerk's office. Such alteration shall not

take effect until after the then next general election, except in case of the alteration, erection or division of a town, in which case it shall take effect immediately. Laws 1842, chap. 130, tit. 3, art. 3.

*Dividing new town into districts.* When any new town shall be formed, the supervisor, town clerk and assessors therein, shall meet at the town clerk's office, on or before the first Tuesday in September preceding the first general election to be held in such town, and divide the same into districts as herein prescribed, and the same proceedings, in all respects, shall be had as herein provided in respect to towns now existing. Id. 17.

*To give notice of time and place of holding elections.* The common council of each city, and the said town officers of each town, on the first Tuesday of September next and on the first Monday in October in each year thereafter, shall designate the place in each election district in such city or town at which elections shall be held during the year; and they shall thereupon give notice, written or printed, to be posted in at least eight public places in each district, containing a description of such place so designated, and of the time of opening and closing the poll. Id. See Form No. 7.

#### AS COUNTY CANVASSERS.

Ordinarily the supervisors of the several towns constitute, collectively, the board of county canvassers to canvass the votes cast at an election, but if for any reason there be no supervisor in a town, or

he be disabled from attending the board of county canvassers, that duty devolves upon one of the assessors of the town. In such case the assessor will find the following provisions a reliable guide in the discharge of these duties :

*Statement to be delivered to supervisor or assessor.* The original statement of votes cast at a general or special election shall be delivered, duly certified by the inspectors, or by one of them, to be deputed for that purpose, to the supervisor of the town or ward, within twenty-four hours after the same shall have been subscribed. If there be no supervisor, or he shall be disabled from attending the board of county canvassers, such original statement shall be delivered to one of the assessors of the town or ward in which such election was held. 1 R. S. 132.

*Form and contents of the original statements.* The original statements to be made by the inspectors and delivered to the supervisors or assessors, are to be made as follows :

The canvass shall be completed by ascertaining how many ballots of the same kind, corresponding in respect to the names of persons thereon, and the offices for which they are designated, have been received ; and, the result being found, the inspector shall securely attach to a statement of such canvass, one ballot of each kind found to have been given for the officers to be chosen at such election, any or either of them, except those given for electors of president or vice-president ; and they shall state in words at full length, immediately opposite such ballot, and written partly

on such ballot and partly on the paper to which it shall be attached, the whole number of all the ballots that were received which correspond with the one so attached, so that one of each kind of the ballots received at such election for the officers then to be chosen, shall be attached to such paper, with a statement of such canvass. They shall also attach to such paper the original ballots rejected by them as being defective, which were given at such election. 1 R. S. 141, § 42. See Forms Nos. 8, 9 and 10.

When electors of president and vice-president shall be chosen at any election, the inspectors shall make a separate canvass and statement of votes given for electors, in the manner prescribed in the last preceding section, by ascertaining how many ballots of the same kind, corresponding in respect to the names thereon, have been received; and the result being found, the inspectors shall securely attach to paper one original ballot of each kind found to have been given for electors, and shall state, in words at full length opposite such ballot, and written partly thereon and partly on the paper to which it shall be attached, the whole number of ballots for electors, that were found to have been received, corresponding with the one so attached. They shall also attach to such paper all original ballots for electors, rejected by them as being defective. Id. § 43. See Form No. 8.

The statements to be made by the inspectors shall contain a caption stating the day on which, and the number of the district, the town or ward, and the county at which the election was held, in relation to which such statement shall be made; it shall also

contain a statement showing the whole number of ballots taken for each person, designating the office for which they are given, which statement shall be written in words at length; and, at the end thereof, a certificate that such statement is correct in all respects, which certificate shall be subscribed by the inspectors. 1 R. S. 141, § 44.

*Board, how constituted.* The supervisors or assessors to whom the original statement of the canvass of votes in the towns or wards to which they respectively belong, shall have been delivered, shall form the county board of canvassers. Id. 133.

*When and where to meet.* They shall meet at the office of the clerk of the county, on the Tuesday next following the election, before one o'clock in the afternoon of that day, in all the counties of this State, except in the county of Hamilton, which shall meet on the first Friday next following said election, and shall choose one of their number chairman. Id.

*Secretary.* The clerk of the county, or in his absence his deputy, shall be secretary of the board. Id.

*Oath.* The chairman shall then administer the constitutional oath to each member of the board, and the same oath shall be administered to him by the secretary. Id. The oath is to be in the following form :

I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will

faithfully discharge the duties of the office of canvasser of the votes of the county of Rensselaer, according to the best of my ability.

*Quorum.* The major part of the supervisors or assessors to whom the original statement of the canvass in the several districts in their towns or wards shall have been delivered, shall be a sufficient number to constitute a board. 1 R. S. 133.

*County clerk to deliver statement.* The county clerk shall deliver to the board of county canvassers, all the certified statements of the votes taken in each town or ward at the next preceding election that shall have been received at his office. 1 R. S. 135.

*Estimate of votes to be made.* The original statements of the canvass in each district shall then be produced, and from them the board shall proceed to estimate the votes of the county, and shall make such statements thereof as the nature of the election shall require, such statements shall then be delivered to and deposited with the county clerk. 1 R. S. 133. See Form No. 11.

*Separate statements to be made.* They shall make a separate statement containing the whole number of votes given in such county for the office of governor, lieutenant-governor, judge of the court of appeals, justice of the supreme court, clerk of the court of appeals, secretary of State, comptroller, treasurer, attorney-general, State engineer and surveyor, canal commissioner, inspectors of State prisons, senator in each district, and representative in congress in each

district, or any or either of them ; the names of the persons for whom such votes were given, and the number of votes given for each ; another, of the votes given for all county officers, any or either of them ; another, of the votes given for member of assembly, in each assembly district ; and another, of the votes for electors of president and vice-president ; and another, of the votes given for any proposed amendment to the Constitution. 1 R. S. 133, § 7. See Forms Nos. 11-15.

*Number of votes and names written at length.* In such statements, the whole number of votes given in each town and district, the names of the candidates, and the number of votes given to each, shall be written out in words at full length. Id. § 8.

*How certified.* Each statement shall be certified as correct, and attested by the signatures of the chairman and secretary of the board ; and a copy of each, thus certified and attested, shall be delivered to the county clerk, to be recorded in his office. Id. § 9. See Form No. 13.

*Members of assembly and county officers.* Upon the statement of votes given for members of assembly and county officers, the board shall proceed to determine what person or persons have, by the greatest number of votes, been duly elected to each of the offices mentioned in each statement. Id. § 10.

*Copy to be published.* The board shall cause a copy of every such determination, and of the statement upon which it shall be made, to be published in one

or more of the newspapers printed in the county.  
1 R. S. 133, § 11.

*If an inspector cannot attend at board.* If any one of the supervisors or assessors appointed to attend the county canvass shall be unable to attend the meeting of the board on the day appointed for such meeting, he shall, on or before that day, cause to be delivered at the office of the county clerk the original statement of the votes of his town or ward. Id. § 12.

*Duty of those who attend.* If on that day a majority of the county canvassers shall not attend, or the statements of the votes from every district in the county shall not be produced, the canvassers then present shall adjourn to some convenient hour of the next day. Id. § 13.

At that hour they shall again meet, and the canvassers then attending, although less than a majority of the whole, shall organize themselves as a board, and upon the statements, or certified copies thereof, then produced, shall proceed to estimate, state and certify the votes of the county in the manner before directed. Id. § 14.

*County clerk to procure returns.* If, on the day appointed for the meeting of the board of county canvassers, the board shall not have been organized, owing to a deficient return of votes of the county, the county clerk shall, by a special messenger or otherwise, obtain necessary statements or certified copies thereof, in time to be produced to the board at their next meeting. 1 R. S. 135.

*Statements containing omissions.* If, upon proceeding to canvass the votes, it shall clearly appear to the canvassers that in any statement produced to them, certain matters are omitted in such statement which should have been inserted, or that any mistakes which are clerical merely, exist, they shall cause the said statement to be sent by one of their number (whom they shall depute for that purpose), to the town or ward inspectors, and town or ward canvassers of the town or ward from whom they were received, to have the same corrected; and the said canvasser so deputed shall immediately proceed and give notice to the said town or ward inspectors and canvassers, whose duty it shall be forthwith to assemble together and make such correction as the facts of the case may require; but such town or ward inspectors and canvassers shall not at such meeting change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the board of county canvassers are authorized to adjourn from day to day, for the purpose of obtaining and receiving such statement, such adjournment not to extend beyond three days. 1 R. S. 134, § 15.

*Certificate of board evidence of election.* The certificates of the board of canvassers authorized to canvass the votes given for any elective office, shall be evidence of the election of the persons therein declared to have been elected. 1 R. S. 118, § 17.

But it is only *prima facie* evidence of such election, not conclusive. It may be impeached in an action of the nature of a *quo warranto* to oust a party claiming

title to office under it. In such an action the court may go behind the certificate of the canvassers, and even behind the ballot box, for testimony as to the intention of the voters. *People v. Van Slyck*, 4 Cow. 297; *People v. Ferguson*, 8 id. 102; *People v. Cook*, 8 N. Y. 67.

But in any collateral controversy between a party holding an office under a certificate of canvassers and a stranger, such certificate is conclusive evidence of the right of the party claiming title under it. *Id.*

*Power of canvassers.* The duties of the canvassers are mainly ministerial. They are to make their canvass from the certificate of the district inspectors, provided it is regular on its face and delivered to the proper office within the time allowed by law. They cannot reject such certificate, nor ascertain the intent of the voters by examining witnesses or testimony of any description except that which is in the certificate itself. Thus, when a return of an election district, regular upon its face, signed by three persons as inspectors of election, who in fact had acted as such upon mistaken information, had been rejected by the county canvassers, on the evidence of a certificate of the town clerk that the persons acting were not inspectors, it was held that the canvassers had exceeded their power in receiving such evidence, and that the return of the inspectors should have been admitted. *People v. Cook*, 8 N. Y. 67, and cases cited *supra*.

*Cannot correct errors in returns.* Section fifteen of the statute above cited, which authorizes the county

board to depute one of their number to return the certificates of the district inspectors to those officers, to supply omissions and correct clerical mistakes, if any exist, and to adjourn, in the mean time, to allow the correction to be made, is all the correcting or revising power which the county board has over the district board. The corrections are to be made by the latter board, and are only to be corrections of clerical mistakes, and not to alter any decision before made by them. 8 N. Y. 85.

*Abbreviated names and initials.* The canvassers should allow all votes the names on which are misspelled, if the misspelling does not materially alter the sound of the name. They should also allow the usual abbreviations of a name, as Geo. for George, and Hen. for Henry, but they should reject those votes where the initial letter of the Christian or surname only is used. They cannot receive evidence to show for what name the initials stand. They are not bound to know; they are limited strictly to the record; and if any party is injured by the improper rejection of votes, he has ample remedy before a court and jury. *People v. Ferguson*, 8 Cow. 106.

Thus, where votes are cast for Henry F. Yates, for H. F. Yates and for Frey Yates, the canvassers cannot properly count for Henry F. Yates the votes cast for H. F. Yates and Frey Yates. *Id.*

So where votes were cast for Benjamin Welch, Jr., Benjamin C. Welch and for Benjamin Welch, the canvassers have not the means of knowing that one person is meant by the several appellations, and are not

bound to count the votes for Benjamin Welch, Jr. *People v. Cook*, 8 N. Y. 80. It is a matter of public notoriety that certain abbreviations are generally used to designate particular names ; thus, Benj. for Benjamin, and the canvassers can take cognizance of this fact, but not so with initials. A court and jury are the proper tribunal to decide for whom the initials were intended, after hearing evidence on the subject. Nor should the canvassers count ballots containing only the surname of a candidate. *People v. Stephens*, 5 Hill, 617.

*Loss of ballots.* The accidental loss of ballots in a single election district, even though it prevent a return from that district, will not prevent the board of canvassers from completing their canvass or making their return on the votes cast in districts regularly returned. *Heath's case*, 3 id. 42.

*When power exhausted.* When the board of canvassers have completed their canvass and made their certificate, their power is exhausted, and they cannot afterward reverse their decision and make a different determination. *Hadley v. Mayor of Albany*, 33 N. Y. 603. Nor after they have completed such canvass and made their determination and dissolved, can the supreme court issue a *mandamus* calling them together again for the correction of errors in their determination. Were the same individuals again to convene, they would not constitute the county board of canvassers, nor have power to review former acts or to correct errors. *People v. Supervisors of Greene*, 12 Barb. 217.

*Duty of county clerk.* The county clerk shall record in his office all the statements and certificates that shall have been delivered to him by the county board of canvassers, and shall keep a proper book for that purpose. 1 R. S. 135.

*To prepare three copies.* Of the statement and certificate of the votes for the office of governor, lieutenant-governor, judges of the court of appeals, justices of the supreme court, clerk for the court of appeals, secretary of State, comptroller, treasurer of the State, attorney-general, State engineer and surveyor, canal commissioners, inspectors of State prisons, senators and representatives in congress, or either of them, he shall prepare three certified copies under his signature, and sealed with his seal of office. Id.

*To transmit the same to governor, secretary and comptroller.* Within five days after the adjournment of the board of county canvassers, the county clerk shall deposit in the nearest post-office, directed to the governor, to the secretary of State, and to the comptroller, each, one of the certified copies of the statement and certificates of votes so prepared by him. Id.

*To deliver copy of certificate to county officers.* He shall prepare as many certified copies of each certificate of the determination of the board of county canvassers, as there are persons declared to be elected in such certificate, and shall, without delay, deliver one of such copies to each person so elected. Id.

*List to be sent to secretary of State.* He shall transmit to the secretary of State, within twenty days after

a general election, and within ten days after a special election, a list of the names of the persons elected in the county as members of assembly, and also a list of the names of all persons elected to any county office at such election, with the places of their residence respectively. 1 R. S. 135.

*When to order special election.* When any county officer, proper to be chosen at any general election, shall not have been chosen by reason of a tie vote, it is the duty of the board of county canvassers to order a special election for the election of such officers omitted to be chosen. They shall, without delay, direct and cause to the sheriff, clerk, or county judge of the county in which such election is to be held, a notice specifying the officer to be chosen; the time for which he is to be chosen, and the day on which such election is to be held, which day shall not be less than twenty nor more than forty days from the date of such notice. Such notice is to be signed by the chairman and clerk of the board. Laws 1842, ch. 130, titles 2 and 3.

## SECTION IV.

## OF PROPERTY LIABLE TO TAXATION.

This section relates mainly to the property of individuals liable to taxation. The law relative to the taxation of corporate property will be given hereafter in the section on taxation of corporations.

*Land and personal estate.* All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified. 1 R. S. 387.

The above provision of the statute, that "all lands and personal estate, *within this State*, should be liable to taxation," subject to certain exemptions, is not modified or enlarged by subsequent legislation directing that "every person shall be assessed in the town or ward where he resides when the assesment is made, for all personal estate owned by him," etc. (1 R. S. 5th ed. 908, § 5; Laws of 1851, ch. 176, § 2), so as to make personal property *not within* the State liable to taxation (*People v. Gardner*, 51 Barb. 352). The liability of personal property to taxation depends upon whether or not it is, at the time the assessment is made, within the State (Id.). Money, owned by a resident of this State, but invested in loans in other States, upon securities taken and retained by agents of the owner, in those States, is not liable to taxation in this State (Id.). The legal fiction that personal estate follows its owner, does not prevail, in determining whether personal property which is actually out of the State is liable to taxation here (Id.).

A resident of this State is not liable to taxation on personal property situated out of the State; on the other hand, the personal property of a non-resident, situate here, is liable to taxation with such exceptions only as are prescribed by the law of the State. *People v. Commissioners of Taxes*, 23 N. Y. 224.

Thus where the relator lived in the city of New York, and was taxed for personal property invested in business in New Orleans, the court of appeals held the assessment erroneous. *Id.*

Incorporeal hereditaments, as the right to receive wharfage, etc., are not lands or personal estate, and are not properly taxable. *Boreel v. Major*, 2 Sandf. 552.

*"Land" defined.* The term "land," as used in this chapter, shall be construed to include the land itself, all buildings, and all other articles erected upon or affixed to the same, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the State; and the terms "real estate" and "real property," whenever they occur in this chapter, shall be construed as having the same meaning as the term "land," thus defined. 1 R. S. 387.

The interest of the lessee of real property is taxable as real estate. *Trustees of Elmira v. Dunn*, 22 Barb. 402.

The term "lands," as used in the statute in relation to assessment and taxation (1 R. S. 360, §§ 1, 2), includes such an interest in real estate as will protect the erection or affixing, and possession, of buildings and fixtures thereon, though unaccompanied by the fee; and such an interest, with the buildings and fixtures, may be assessed to the owner thereof. *People v. Carrity*, 46 N. Y. 46.

*"Personal estate" defined.* The terms "personal estate" and "personal property," whenever they occur in this chapter, shall be construed to include all household furniture; moneys; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in moneyed corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate. 1 R. S. 388.

The question what shall be deemed personal estate, *in the possession or under the control of an agent*, within the meaning of the statute, was considered in the case of *Lord v. Arnold* (18 Barb. 104). It was held that, where one is the agent of another for the sale of real estate in his vicinity, and for making contracts for sales, and for receiving the consideration agreed to be paid by the purchasers, and as such agent has in his possession contracts for the lands executed by his principal who resides in another place, and by the several purchasers of the land, the amount owing by

the purchasers on such contracts is not subject to taxation against the agent, as personal estate *in his possession or under his control* as such agent.

Funds and securities held by the courts, are personal property of the persons owning them, and should be assessed to such persons as part of their personal property, at their respective places of residence. *Matter of Kellinger*, 9 Paige, 62.

*Property exempt.* The following property shall be exempt from taxation :

1. All property, real or personal, exempted from taxation by the Constitution of this State, or under the Constitution of the United States.

2. All lands belonging to this State, or the United States.

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning ; every building for public worship ; every school-house, court-house and jail ; and the several lots whereon such buildings are situated, and the furniture belonging to each of them.

4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and to improve the moral condition of seamen, and the real and personal property used for such purposes belonging to or connected with the same.

5. The real and personal property of every public library.

6. All stocks owned by the State, or by literary or charitable institutions.

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter.

8. The personal property of every minister of the gospel, or priest, of any denomination; and the real estate of such minister, or priest, when occupied by him provided such real and personal estate do not exceed the value of one thousand five hundred dollars; and,

9. All property exempted by law from execution.  
1 R. S. 388.

The property of a soldiers' monument association is also exempt. Laws 1866, ch. 273, § 6.

Lands set apart as a situation for a church to be built, are not exempt, nor do lots used for a cemetery become exempt by the erection on them of a burial chapel. *Trinity Church v. Mayor of New York*, 10 How. 138. Nor are buildings used for a private boarding school exempt. The word "school-house" means only the buildings for public schools, and the words "other seminary of learning" are to be understood as referring to incorporations. *Chegary v. New York*, 13 N. Y. 220.

A person cannot build a school-room and establish a private school in his house, and thereby exempt the building and the lot from taxation. The statute was intended to exempt only property used by the public for the purposes of education, or which belonged to a corporation created for the advancement of learning. *Id.*; *Chegary v. Jenkins*, 3 Sandf. 409.

*Minister or priest.* If the real and personal estate, or either of them, of any minister or priest, exceed

the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation. 1 R. S. 388.

Ministers or priests ought not to be exempt, as above provided, unless they are engaged in religious teaching as a business; those who have abandoned or retired from the calling are not to be exempted, even though they occasionally teach or exhort. We find no decision to this effect, but such must be the evident intention of the law. Says Mr. Justice Green, in *Vail v. Owen* (19 Barb. 22): "The proposition that 'once a priest always a priest,' may be well enough as an ecclesiastical maxim, but it will hardly be claimed, I take it, that one who abandons that calling and takes up another is still entitled to the statute exemption from taxation." The question did not, however, arise in the case, and no controlling opinion was rendered. A priest or minister, to sustain an action against the assessors for assessing him, must show not only that he was such, but that the value of both his real and personal property did not exceed one thousand five hundred dollars. He is liable to be taxed for the excess over that sum. *Prosser v. Secor*, 5 Barb. 607.

*Lands sold by the State.* Lands sold by the State, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed. 1 R. S. 388.

*Owner of stock.* The owner or holder of stock in any incorporated company liable to taxation on its

capital, shall not be taxed as an individual for such stock. 1 R. S. 388.

*Poor-houses.* Every poor-house, alms-house, or other place provided by any city, town or county, for the reception and support of the poor, and all real and personal property whatever, belonging to or connected with the same, shall be exempt from all assessment and taxation, levied either by the State, or by any county, city, town or village; and the keeper of every poor-house, alms-house, or other place provided as aforesaid, shall be exempt from all service in the militia, from serving on juries, and for all assessments for labor on the highways. Id. 631.

*Lands of agricultural societies.* All lands now held, or which may hereafter be held, by any agricultural society in this State, and permanently used for show grounds by any such society, shall be exempt from taxation during the time so used. Laws of 1856, chap. 183.

*Demands sent to this State for collection.* When any bond, mortgage, note, contract, account or other demand, belonging to any person not being a resident of this State, shall be sent to this State for collection, or shall be deposited in this State for the same purpose, such property shall be exempt from taxation; and nothing contained in this chapter shall be construed to render any agent of such owner liable to be assessed or taxed for such property; but every such agent shall be entitled to have any such property deducted from his assessment, upon making

affidavit, before the assessors, at the time appointed by them for reviewing their assessments, that such property belongs to a non-resident owner, and therein specifying his name and residence. 1 R. S. 419.

*Plank roads and turnpikes.* Toll-houses and other fixtures, and all property belonging to any plank or turnpike road company, shall be exempt from assessment and taxation for any purpose whatsoever, until the surplus annual receipts of tolls on their respective roads, over necessary repairs and a suitable reserve fund for repairs and relaying of plank, shall exceed seven per cent per annum on the first cost of such road. In case of any disagreement between the assessors of any town, village or city, and any such company, concerning such exemption claimed, said company may appeal to the county judge of the county in which such assessment is proposed to be made, who shall, after due notice to the appealing party of such appeal, examine the books and vouchers of such company, and take such further proof as he shall deem proper, and shall decide whether such company is liable to taxation under this section, and his decision shall be final. Laws 1854, chap. 87, § 4, as amended 1855, chap. 546, § 5.

The provision of the above act, exempting property belonging to any plank or turnpike road company from assessment and taxation, "until the surplus annual receipts of tolls on their respective roads over necessary repairs, and a suitable reserve fund for repairs and relaying of plank, shall exceed seven per

cent per annum on the first cost of such road," refers to the road which the corporation has, and operates, at the time the assessment is made, and the cost of that road. *People v. Freeman*, 3 Lans. 148. The liability of the property of a plank-road company, which has abandoned a part of the road constructed by it, to assessment, depends upon the question whether the annual surplus receipts of tolls exceed seven per cent on the first cost of the road retained by it, and not on the whole original road. *Id.*

*Indian reservations.* The act of February, 1857, to relieve the Seneca nation of Indians from certain taxes on the Allegany and Cattaraugus reservations, provides that no tax shall hereafter be assessed or imposed on either of said reservations, or on any part thereof, for any purposes whatever, so long as said reservations remain the property of the Seneca nation; and all acts of the legislature conflicting with this provision are repealed. Laws of 1857, ch. 45, § 4.

It has been held that this act was not intended to affect any of the provisions of the general law declaring what property shall be liable to taxation, but merely exempts such reservations from taxation so long as they remain the property of that nation. *People v. Beardsley*, 52 Barb. 105; affirmed 41 N. Y. 619. Land belonging to the Allegany Indian reservation, which a railroad company has acquired a right to occupy for the construction, occupancy and maintenance of its road by contract with the chief of the nation to which it belongs, not limited as to time, is owned by the company within the meaning of the

statutes relating to taxation. Although the fee of the land cannot legally pass under such contract, yet, to the extent specified therein, such land has ceased to be the property of the Indian nation, and is no longer exempt from taxation as such. *Id.*

*Mints and assay offices.* The mints and branch mints of the United States in the city of New York, the lands upon which such mints are built, the machinery, bullion, coin, etc., therein, are exempt. Laws 1852, chap. 46.

The building, lands, machinery, bullion, etc., in the United States assay office in New York, are likewise exempt. Laws 1853, chap. 406.

*United States treasury notes and certificates.* Treasury notes and certificates of indebtedness, issued by the United States government, under the acts of 1862, are exempt from State taxation. *People v. Donnelly*, 36 How. Pr. 258. States cannot control the national government, within its constitutional powers, for there it is supreme; nor can they tax its obligations for the payment of money issued for purposes within that range of powers, because such taxation necessarily implies the assertion of the right to exercise such control. *Id.*

*Property of Rural Cemetery Associations.* The cemetery lands and property of any association formed pursuant to the act of 1847, ch. 133, are exempt from all public taxes, rates and assessments, and shall not be liable to be sold on any execution, or be applied in payment of debts due from any individual proprietors, so long as the same shall remain dedicated to the purpose of a cemetery; and during that time

no street, road, avenue or thoroughfare shall be laid through such cemetery, or any part of the lands held by such association for the purposes aforesaid; without the consent of the trustees of such association, except by special permission of the legislature. Laws of 1847, ch. 133, § 10.

It has been held that the above provision exempting cemetery property from "all public taxes, rates and assessments" does not apply to a municipal assessment to defray the expenses of a local improvement. *Buffalo City Cemetery v. City of Buffalo*, 46 N. Y. 506. Statutes conferring exemptions from taxation are to be strictly construed. *Id.*

*Shares of National Banks.* The provision of the act of 1865, ch. 97, § 10, subjecting shares in national banks to assessment and taxation, having been adjudged to be invalid, by the supreme court of the United States, an assessment upon shares of a national bank is invalid, and cannot be enforced. *First National Bank of Sandy Hill v. Fancher*, 48 N. Y. 524.

Where a tax upon the capital stock of a bank, including that portion invested in United States securities, was assessed, levied and paid prior to the decision of the supreme court of the United States, holding that the portion so invested was exempt from taxation, and where a claim was made to a board of supervisors, under the provisions of the act to provide against illegal taxation (Laws of 1867, ch. 938) for the repayment of that portion of the tax so illegally assessed; *held*, that it was no answer to the claim that the claimant did not appear before the assessors and object to the assessment; or that it voluntarily

paid the tax. *People v. Supervisors of Madison*, 51 N. Y. 442.

*Property exempt from execution.* The statutes above quoted exempt from taxation all property exempt by law from execution. The following property is exempt, under the Revised Statutes, from levy and sale under an execution against the owner when he is a householder. A "householder" is the head, master, or person who has charge of and provides for a family. It has been held that one who rents a house, and keeps boarders and servants, is a householder, even though he have no wife or child for whom he provides. *Hutchinson v. Chamberlin*, 11 N. Y. Legal Obs. 248; *Van Vechten v. Hall*, 14 How. 436.

And when a husband has left the State, leaving wife and children together, the wife will be deemed a householder. A householder does not lose the character of housekeeper by ceasing temporarily to keep house, and storing his goods with a view to retake them again, and renew housekeeping. Crocker on Sheriffs, citing 18 John. 400; 14 Barb. 456.

The articles of personal property thus exempted are:

1. All spinning-wheels, weaving-loom and stoves, put up or kept for use, in any dwelling-house.

2. The family Bible, family pictures and school books, used by or in the family of such person; and books not exceeding in value fifty dollars, which are kept and used as part of the family library.

3. A seat or pew occupied by such person or his family in any house or place of public worship.

4. All sheep, to the number of ten, with their fleeces, and the yarn or cloth manufactured from the same; one cow, two swine, the necessary food for them; all necessary pork, beef, fish, flour and vegetables, actually provided for family use (whether gathered or growing, 25 Wend. 370); and necessary fuel for the use of the family for sixty days.

5. All necessary wearing apparel, beds, bedsteads and bedding, for such person and his family; arms and accoutrements, required by law to be kept by such person; necessary cooking utensils; one table; six chairs; six knives and forks; six plates; six teacups and saucers; one sugar-dish; one milk-pot; one tea-pot and six spoons; one crane and its appendages; one pair of andirons, and a shovel and tongs.

6. The tools and implements of any mechanic, necessary to the carrying on of his trade, not exceeding twenty-five dollars in value. 2 R. S. 367.

In addition to the articles now exempted by law from levy and sale under execution, there shall be exempted from such sale necessary household furniture and working tools, and team, professional instruments, furniture and library owned by any person being a householder or having a family for which he provides, to the value of not exceeding two hundred and fifty dollars, and in addition thereto there shall be exempt from such levy and sale the necessary food for said team for a period not exceeding ninety days, and a sewing machine; provided that such exemption shall not extend to any execution issued on a demand for the purchase money of such furniture, tools or

team, or the food for said team, or professional instruments, furniture or library, sewing machine or the articles now enumerated by law. Laws 1842, ch. 157; as amended 1866, ch. 782.

So is land set apart for and which has been actually used as a burying ground, not exceeding one-fourth of an acre in extent, and on condition that the owner has recorded a description in the manner prescribed. Laws 1847, ch. 85.

In addition to the property now exempt by law from sale under execution, there shall be exempt by law from sale on execution for debts hereafter contracted, the lot and buildings thereon, occupied as a residence and owned by the debtor, being a householder and having a family, to the value of one thousand dollars. Such exemption shall continue after the death of such householder, for the benefit of the widow and family, some or one of them continuing to occupy such homestead until the youngest child become twenty-one years of age, and until the death of the widow. And no release or waiver of such exemption shall be valid unless the same shall be in writing, subscribed by such householder, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged. Law 1850, ch 260.

To entitle any property to such exemption the conveyance of the same shall show that it is designed to be held as a homestead under this act, or if already purchased, or the conveyance does not show such design, a notice that the same is designed to be so held shall be executed and acknowledged by the

person owning the said property, which shall contain a full description thereof, and shall be recorded in the office of the clerk of the county in which the said property is situate, in a book to be provided for that purpose, and known as the "Homestead Exemption Book." But no property shall by virtue of this act, be exempt from sale for non-payment of taxes or assessments, or for a debt contracted for the purchase thereof, or prior to the recording of the aforesaid deed or notice. Laws 1850, ch. 260.

The professional books necessary to a professional man who supports a family by the practice of his profession, are exempt from execution as a part of the family library; also the surgical instruments of the physician, are exempt as his "tools." *Robinson's case*, 2 Abb. 466. So the horse of a county physician, whose patients reside at so great a distance as to prevent his visiting them on foot, are entitled to the exemption as a necessary team. *Wheeler v. Crop-ley*, 5 How. 288. Also the wagon used in his professional business. *Van Buren v. Loper*, 29 Barb. 388. But a threshing machine is not exempt as a "tool." *Ford v. Johnson*, 34 Barb. 366. Nor a printing press or type. 13 Mass. 82; 10 Pick. 423. An article otherwise exempt is not the less so because it is new and has never been used. *Fields v. Moore*, 15 Abb. 6. If however the owner sell exempt property, the debt due him therefor is not exempt. See Thompson's Pro. Rem. 392.

All United States stocks, bonds, securities, certificates of indebtedness and legal tender notes, are exempt from taxation for State and municipal pur-

poses. The United States supreme court has uniformly reversed the decisions of the court of appeals of this State which held them taxable. *People v. Donnelly*, 36 How. 258.

*Military exemption.* The question as to whether the exemption from taxation provided by the Military Code of 1862, for members of the national guards, was repealed by the act of 1869, chapter 645, page 1537, has elicited much discussion. The State authorities themselves seem hardly satisfied as to the effect of the last mentioned act. The question can only be satisfactorily settled by a judicial decision. Our own opinion is, after a careful examination of the various statutes, that the exemption was not repealed, but remains in full force so far as it relates to those actually in the service. The following is, briefly, the history of the legislation on the subject, so far as it effects this question: Section 146, chapter 477, of the Laws of 1862 (which chapter provided for the organization of the national guards), provided, that all general and staff officers, all field officers, and all commissioned and non-commissioned officers, musicians and privates of the military forces of this State, shall be exempt from jury duty, from the payment of highway tax not exceeding six days per year, or if not assessed for highway taxes, be entitled to a deduction in the assessment of their real and personal property to the amount of five hundred dollars. Persons having served the full term of seven years, and having been honorably discharged, were to be exempt from two days' highway tax, and

were entitled to a deduction of five hundred dollars on assessments.

In 1864, chapter 334, section 146 aforesaid, was amended. The only material difference between the two sections being as to the number of days' exemption from highway tax.

In 1867, chapter 501, section 146, of chapter 477 of the Laws of 1862, was amended, so as to read as follows :

“Every non-commissioned officer, musician or private of the national guard of this State shall be holden to duty therein for the term of seven years from his enlistment, unless disability after enlistment shall incapacitate him to perform such duty, or he shall be regularly discharged by the commandant of his regiment; all general and staff officers, all field officers, all commissioned and non-commissioned officers, musicians and privates of the organized national guards of this State, shall be exempt from jury duty during the time they shall perform military duty, and shall be entitled to a deduction in the assessment of their real and personal property, to the amount of five hundred dollars each, except cavalrymen, artillerymen and mounted officers, who shall be entitled to a deduction of one thousand dollars on all classes of taxes; and every person who shall have so served seven years, and shall have been honorably discharged, as required by this section, shall forever after, as long as he remains a citizen of this State, be exempt from jury duty.”

The balance of the section relates simply to grounds for discharge from service.

In 1869, chapter 645, page 1537, a clause was smuggled into the appropriation bill, as would seem, providing as follows: "Section 146 of chapter 334, Laws of 1864, which exempts members of the national guard from the payment of highway taxes, and which entitles them to a deduction in the assessment of real and personal property, to the amount of five hundred dollars, is hereby repealed."

It will be observed, that section 146, of the Laws of 1864, had been in effect repealed by the act of 1867, which substituted a new section, and that, if construed literally, the act of 1869, went no further than to repeal a statute already repealed. It is undoubtedly true, that statutes are to be liberally construed so as to carry out the intent of the law makers; but there is a limit to this rule, and courts cannot violate the express language of a statute for the purpose of furthering an assumed intention of the legislators.

In *Ely v. Holton*, 15 N. Y. 599, the court held, that, where a statute is amended, "so as to read as follows," the portions of the section which are repeated are to be considered as having been the law from the time they were first enacted, and the new provisions are to be understood as enacted at the time the amendment took effect.

The act of 1864 amended section 146 of the act of 1862, "so as to read as follows," the only change made being as to the number of days' exemption from highway tax after the full term of service had expired. In other words, the amendment was only equivalent to an independent statute declaring that the exemption from highway tax, after the full term of service, should

be six days instead of two. All the other parts of the section was the law of 1862. The effect of the act of 1869 only amounted to a repeal of such independent statute extending the highway exemption. See *Ely v. Holton*, 15 N. Y. 599.

On the other hand, the amendment of 1867 made several important changes in the law. Exemption from highway tax was omitted *entirely*, and every member of the *national guard* was exempted from taxation in \$500. The prior statute had exempted members of the *military forces* of the State, and the exemption had been either from highway duty *or* taxation. Cavalrymen, artillerymen and mounted officers, were exempted from taxation to the extent of \$1,000. This was an entirely new clause. Another material change was made. The act of 1862 and the amendment of 1864 provided, that those who had served the full term and been honorably discharged should have certain exemptions from highway duty and assessments on property. In the act of 1867, that provision was omitted, and in its place was the provision that those who had served the full time should be exempt from "jury duty"; nothing being said about exemptions from assessments, etc.

It would therefore seem, that, within the rule of *Ely v. Holton* (*supra*), the act of 1869 had no other effect than to repeal that part of the act of 1864 which referred to exemption from highway duty, and also that the act of 1867 was, in its material points, a new law, separate from and in addition to the law of 1862, and therefore not repealed by implication by the act of 1869.

In *The People v. Assessors of Brooklyn* (8 Abb. N. S. 150), it is held that the provision of chapter 645 of the Laws of 1869, purporting to repeal section 146 of chapter 334 of the Laws of 1864, which re-enacted, in an amended form, section 146 of the Military Code of 1862, is nugatory, because the section referred to was, subsequent to 1864, re-enacted in a still different form, in 1865 and 1867, to which re-enactment the repealing does not refer, and that the latter act left the exemptions of militia men from taxes, assessments, etc., as defined by the act of 1867.

As has been before remarked, there is no provision in any act of 1867 exempting from assessment those whose terms of service have expired, and they are consequently liable to be assessed to the full amount of their property. The court of appeals decided, in the case of *The People v. Roper*, 35 N. Y. 629, that the provision for exempting from taxation, to a limited extent, members of military organizations, was not a contract, and that the legislature had power to repeal it, as well to those who had enlisted and served their term, under the expectation of receiving its benefits, as to those enlisting after the passage of the law.

By section 253 of chapter 80 of the Laws of 1870, which chapter is therein declared (§ 268) to repeal chapter 467 of the Laws of 1862, and all the acts amendatory thereto, and all other acts or parts of acts conflicting with the provisions of the act of 1870, it is provided, that "every commissioned officer, and every non-commissioned officer, musician and private of the national guard shall be exempt from jury duty, and shall be entitled to a deduction from the assessed valuation of his real and personal property to the amount of one thousand dollars during the time he shall perform military duty," etc.

By the act of April 1, 1871, certain officers and privates of the military forces of this State, honorably discharged after serving for seven years, were exempted from jury duty, and from the payment of highway taxes, not exceeding six days in any one year. Laws of 1871, ch. 245. This act, however, was repealed in 1872. Laws of 1872, ch. 519.

By Laws of 1876, chapter 29, section 3, the 253d section of the act of 1870 is amended by striking out the provision entitling the persons mentioned in said section to a deduction from the assessed valuation of their property.

*Liability for assessing exempt property.* The courts have differed on the question as to whether assessors are liable personally for assessing exempt property. In *Prosser v. Secor*, 5 Barb. 607, it was held that they were,—that their act was without jurisdiction and void. But *Vail v. Owen*, 19 Barb. 22, and *Brown v. Smith*, 24 id. 419, both held that an assessment of exempt property was only erroneous, and that the assessors were not liable. The matter has been finally decided by the court of appeals in *Barhyte v. Shepherd*, 35 N. Y. 238, and in *Foster v. Van Wyck*, 4 Abb. N. S. 469. In those cases it was held, that the decision of the assessors as to what property is taxable and what exempt, is a judicial act, and that the assessors are not liable for any errors in such decision. In the former case, the plaintiff sued the assessors for damages sustained by him in being placed upon the assessment roll by the assessors, and by their refusing to allow him the exemption from taxation, he being a minister of the gospel. The court held, that the assessors were not liable. The case of *Prosser v. Secor*, above cited, was overruled. The duty of the assessors in determining the questions of exemption, is one of considerable embarrassment, and should be performed with great caution.

## SECTION V.

## WHERE AND TO WHOM PROPERTY TO BE ASSESSED.

*Lands, where taxed.* Every person shall be assessed in the town or ward where he resides when the assessment is made, for all lands then owned by him within such town or ward, and occupied by him, or wholly unoccupied. 1 R. S. 389.

Where one resided in a hired house in the city during the winter, and at his country seat in another county in the summer, and was assessed as a resident of the city first, and afterward as a resident at his country seat, it was held that the first assessment was proper, and his remedy was to have objected to the second assessment. *Duryeas v. Mayor, etc., of New York*, 2 Duer, 110. The words of the section, the time "when the assessment is made," relate to the binding and conclusive act of the board of assessors which designates the tax payers and the taxable property. This time is the first day of July, as the assessors have between the first days of May and July to make their preparatory inquiries. Therefore, where a person resided in a town upon to the 25th of May, and then moved into another county, it was held that he was not liable to be taxed in the town from which he had moved. *Mygatt v. Washburn*, 15 N. Y. 316.

The assessment is regarded in law as made on the first day of July, and all included in the list must be residents of the town or ward on that day. *Id.* If there is any change of residence or ownership after the first day of July, it does not affect the assessment roll. Any changes which the assessors are authorized

to make after that time are simply such as may be required to correct mistakes. *Boyd v. Gray*, 34 How. 323.

Assessments must be made by the 1st of July, and of property and persons in respect to the liability as it exists upon that day. An individual not liable upon that day cannot be placed upon the assessment roll thereafter; nor can a person whose name is properly upon the roll be assessed for property subsequently acquired. *Clark v. Norton*, 49 N. Y. 243.

*To whom assessed.* Land occupied by a person other than the owner, may be assessed to the owner or occupant, or as non-resident lands. 1 R. S. 389.

Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as hereinafter provided. *Id.*

If the owner resides in the town or ward, the lands shall be assessed to him, unless they are actually occupied by another, and then they may be assessed either to the owner or occupant. If the owner does not reside in the town or ward, and the lands are unoccupied, they must be assessed as non-resident lands. These provisions are imperative, and there is no authority for making the assessment otherwise. *Whitney v. Thomas*, 23 N. Y. 281. But lands occupied by another than the owner, may be assessed either to the owner or occupant, whether such owner be a resident or not. *Johnson v. Learn*, 30 Barb. 616.

*When divided by town line.* When the line between two towns or wards divides a farm or lot, the same

shall be taxed, if occupied, in the town or ward where the occupant resides; if unoccupied, each part shall be assessed in the town in which the same shall lie; and this, whether such division line be a town line only, or be also a county line. 1 R. S. 389. The words "farm" and "lot," as used in this section, are synonymous, and where a person owns one *entire farm* and a town line passes through the same, it must be assessed to the town where the owner or occupant resides, although the farm comprises portions of distinct lots and each lot lies in a different town. *Saunders v. Springsteen*, 9 Wend. 439.

*On bridges and roads.* So much of any bridge or toll-houses constructed by virtue of the act of 1848 as shall be within any town, city or village, shall be liable to taxation in such town, city or village as real estate. Laws 1848, chap. 259.

So much of any plank or turnpike road, and of the toll-houses, gates and other appurtenances thereof, constructed by virtue of the act of 1847, as shall be within any town, city or village, shall be liable to taxation in such town, city or village, as real estate. Laws 1847, chap. 210, § 48.

*Personal property, where taxed.* Every person shall be assessed in the town or ward where he resides when the assessment is made for all personal estate owned by him, including all personal estate in his possession or under his control as agent, trustee, guardian, executor or administrator, and in no case shall property so held under either of these trusts be

assessed against any other person, and in case any person possessed of such personal estate shall reside during any year in which taxes may be levied in two or more counties, towns or wards, his residence, for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town or ward in which his principal business shall have been transacted; but the products of any State of the United States consigned to agents in any town or ward of this State, for sale on commission, for the benefit of the owner thereof, shall not be assessed to such agent, nor shall such agents or moneyed corporations or capitalists be liable to taxation under this section, for any moneys in their possession or under their control, transmitted to them for the purposes of investment or otherwise. 1 R. S. 389, as amended 1851, chap. 176.

If assessors undertake to assess a person for personal property, who is not a resident of their town, they render themselves liable in an action brought by such person for the damages he has sustained in consequence of such illegal assessment. *Bailey v. Buell*, 59 Barb. 158. The plaintiff in such an action is not bound to show that he is a taxable inhabitant of some other town or place, in order to maintain it; nor can the contrary be shown by way of defense. It is enough for him to show, in such a case, that he was not a resident, and that the assessors had no jurisdiction over him. *Id.*

Personal estate, unlike real estate, is never treated

as "non-resident." The owner may reside in one part of the State and his goods and chattels be situated in another part, still they are assessed to him, and not as non-resident, unless in the possession or control of an agent, trustee, guardian, etc., at the place of their actual location, in which case they must be assessed to such agent, trustee, etc.

The above section only contemplates personalty situated within this State. But the fact, that the owner is a non-resident, does not affect the case. The possession of chattels is never vacant, and the agent or trustee having it in charge in this State is assessed in the owner's stead. *Hoyt v. Collector of Taxes*, 23 N. Y. 224.

Where, at the time of the making out of an assessment roll, the agent of a non-resident has moneys belonging to his principal on deposit in a bank, it is liable to be assessed and taxed, although, prior to the time appointed for correction of the roll, it has been withdrawn and used. *People v. Trustees of Ogdensburgh*, 48 N. Y. 390. Money due upon a contract for the sale of lands is personal property; and where such a contract, belonging to a non-resident, is in the hands of an agent, who is a resident of an incorporated village, it may, for the purposes of municipal taxation, be assessed to the agent, and taxed. *Id.*

But a resident cannot be taxed for personal property actually situate out of the State. *Hoyt v. Collector of Taxes*, 23 N. Y. 224.

The words of this section, "when the assessment is made," relate to the binding and conclusive act of the board of assessors which designate the tax-payer and the amount of taxable property. This time is the first day of July. By the statutes hereafter cited it will be seen that the assessors are to proceed between the first days of May and July in each year, "to ascertain by diligent inquiry, the names of the taxable inhabitants" in their town or ward. They are then allowed, between the first days of July and August, to complete and copy the assessment roll. The courts have, with great unanimity, decided that the inquiry between the first days of May and July is merely preliminary, and that the assessment is in law made on the first day of July, and is to include only those who reside in the town or ward on that day. Therefore, where a person removes from a town at any time before the first day of July, his personal property is not taxable in such town. So where a person becomes a resident of a town at any time prior to that day, he should properly be assessed as to his personalty in such town. *People v. Supervisors of Chenango Co.*, 11 N. Y. 563; *Mygatt v. Washburn*, 15 id. 316, and cases cited.

Assessors are bound to determine the question of residence at the peril of personal responsibility in damages in case they shall, by mistake, even without fraud and malice, place the name of a non-resident on the assessment roll. In such a case they have no

jurisdiction, and their acts are void. *Id.*; *Barhyte v. Shepherd*, 35 N. Y. 238.

The question as to the place of residence of a person owning real estate subject to taxation, is one for adjudication by the assessors, and the duty of deciding it is a judicial duty; and even if they err in the performance of it, ever so clearly and palpably, they are not liable to an action for the redress of the injury thereby occasioned. *Dorn v. Backer*, 61 Barb. 597. Thus, where the largest portion of the plaintiff's farm lay in the town of which the defendants were assessors, and the principal dwelling house, and other buildings, were on that portion; *held*, that the assessors had jurisdiction of the subject-matter, and the question as to whether the farm should be assessed in their town was one they were called upon to consider and determine, in the performance of their official duty, and that an action would not lie, against them, to recover back taxes assessed by them upon the farm, although it appeared that at the times when the assessments were made, the plaintiff did, in fact, reside, with a part of his family, in a temporary building erected upon a portion of the farm lying in an adjoining town. *Id.* That the duty, and the right, to inquire and decide where the property was liable to be assessed, were necessarily coupled together and constituted jurisdiction in the matter; and this gave to their decision, if wrong, the character of an error of judgment in a judicial proceeding, for which they were not liable in an action. *Id.*

The plaintiff owned a residence and lived with his family in the city of Buffalo, and the only business in which he was engaged was transacted in that city.

He also owned a house and grounds in the town of W., where his family spent the summer. During that time he attended to his business in Buffalo, sleeping at his house there one or two nights in a week. The other nights he spent with his family. His wife occasionally went to Buffalo, staying over night. On the 20th of June the plaintiff's family went to W. as usual. The defendants, as assessors of the town of W., assessed the plaintiff's personal property, and a tax was imposed upon him, levied and collected. The defendants had no knowledge, before the delivery of the roll to the supervisor, that the plaintiff had, or claimed, any residence except in W. *Held*, that the plaintiff was, for the purposes of taxation and within the meaning of the act of 1850, amending the Revised Statutes, in regard to the assessment of taxes upon personal property (Laws of 1850, ch. 92), a resident of the town of W.; that the assessors had jurisdiction to include his personal property in the assessment roll, and to determine where his principal business was transacted, and were not liable for an erroneous decision; that the plaintiff, therefore, had no cause of action. *Bell v. Pierce*, 51 N. Y. 12.

Assessors who have assessed a non-resident of their town for personal property are individually liable to him for damages arising on account of a sale of his property for collection of the tax levied pursuant to the assessment. *Wade v. Matheson*, 4 Lans. 158.

If there is any change of residence or ownership of property after the first of July, it does not affect the assessment roll. Any changes which the assessors are authorized to make after that time, are simply

such as may be required to correct mistakes. *Boyd v. Gray*, 34 How. 323.

So, a person cannot, after the first day of July, shift his property and convert it into other property not liable to taxation, and on the day fixed for reviewing the assessment by the assessors, apply and have his name and the amount assessed against him stricken from the assessment roll. The condition of affairs on the first day of July is conclusive. *Id.*

*Residence.* Where a person resides in two or more counties, towns or wards, his residence, for the purposes of taxation, is deemed to be in the county, town or ward in which his principal business shall have been transacted. 1 R. S. 389. The residence of an individual banker doing business under the general banking law is, for the purpose of the taxation of his banking capital, in the town or ward specified as the location of his banking office in the certificate required by statute. *Miner v. Fredonia*, 27 N. Y. 155.

For the purposes of taxation, the residence of one liable to assessment for personal property will be deemed to continue where it has been, until a change is affirmatively shown; or, at least, until there is satisfactory evidence of the abandonment of that place as a residence. *Matter of Nichols*, 54 N. Y. 62.

*Assessment against trustee.* Every taxable person is to be taxed, not only for his own personalty, but for the personal property in his possession or under his control as agent, trustee, guardian, executor or administrator, and in no case is property so held under either of these trusts to be assessed against any other person. 1 R. S. 389. If any such trustee omits to avail himself of the provisions of the statute for correcting assessments he is concluded from questioning the assessment in any manner, and in the absence of trust property sufficient to satisfy the tax, his individual property may be taken. *Williams v. Holden*, 4 Wend. 223.

Residents of this State, who are trustees of a sinking fund, raised and owned by a foreign corporation, but invested and controlled by the trustees, may properly be assessed as such trustees, at the place of their residence, to the full value of the fund. *People v. Assessors of Albany*, 40 N. Y. 154. In assessing a trust fund against a trustee, for taxation, the debts owing and chargeable upon such fund should be deducted from its full value, and the balance, only, assessed. *Id.*

*Consignments to agents.* But the products of any State of the United States consigned to agents in any town or ward of this State, for sale on commission for the benefit of the owner thereof, shall not be assessed to such agents, nor shall such agents of moneyed corporations or capitalists be liable to taxation under this section for any moneys in their possession or under their control, transmitted to them for the purposes of investment or otherwise. 1 R. S. 389.

*Debts owing for the purchase of real estate.* All debts owing by inhabitants of this State to persons not residing within the United States, for the purchase of any real estate, shall be deemed personal property, within the town or county where the debtor resides, and as such shall be liable to taxation in the same manner and to the same extent as the personal estate of citizens of this State. Laws 1851, ch. 371, § 1.

This subject will be more fully treated hereafter.

*Tax on non-resident bankers, etc.* All persons and associations doing business in the State of New York, as merchants, bankers, or otherwise, either as princi-

pals or partners, whether special or otherwise, and not residents of this State, shall be assessed and taxed on all sums invested in any manner in said business, the same as if they were residents of this State; and said taxes shall be collected from the property of the firms, persons or associations to which they severally belong. Laws 1855, ch. 37.

Goods belonging to a non-resident and sent to this State for sale, without intending to reinvest here the proceeds, are not liable to taxation under the above section. *People v. Commissioner of Taxes*, 23 N. Y. 242.

Non-residents who are peddlers of goods within this State are liable to taxation upon the money invested in their business in each town where they peddle, and if they are assessed in more than one town, their remedy is to appear before the assessors and swear off the tax. *Hitt v. Crosby*, 26 How. 413.

A resident of this State cannot be assessed here for capital invested in loans in other States, upon securities held by his agents in those States. *People v. Gardner*, 51 Barb. 352.

## SECTION VI.

### ASSESSMENTS, HOW MADE.

The assessors chosen in each town or ward, may divide the same by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in such town or ward. 1 R. S. 390.

Between the first days of May and July, in each year, they shall proceed to ascertain, by diligent inquiry, the names of all the taxable inhabitants in

their respective towns or wards, and also all the taxable property, real or personal, within the same. 1 R. S. 390.

The assessment of property which regulates the amount of tax, must be the joint act of *all* the assessors, or of a majority of them at a meeting of all. The statute contemplates the exercise of their common judgment and discretion. The above sections empower them to divide the town or ward, by mutual agreement, but this is simply for the purpose of facilitating inquiry and the obtaining of reliable data on which to base an assessment. *People v. Supervisors of Chenango*, 11 N. Y. 563.

The assessors, in making the assessment act judicially, and it is a well settled principle of law, that, when several persons are appointed to act judicially in a public matter, they must all confer, though a majority may decide. *Ex parte Rogers*, 7 Cow. 526; *Downing v. Rugar*, 21 Wend. 178.

However, when an assessment is made, the legal presumption is that all have conferred; but it may, nevertheless, be shown that one was not consulted and did not act. *Doughty v. Hope*, 1 N. Y. 79.

Assessors, so long as they confine themselves within the statute rule, act in a judicial manner, and are not liable personally, however grossly they may err; but if they act outside of their jurisdiction, as where they assess a non-resident for personal property, their acts become void and they themselves liable to pay all damages arising for their illegal acts. *Mygatt v. Washburn*, 15 N. Y. 316; *People v. Chenango Co.*, 11 id. 563.

The decision of assessors, under the statutes relative to the bonding of towns in aid of railroads, that the consents of the required number of tax payers have been obtained, and that they represent the requisite amount of property, is a judicial decision; and being so, the officer or body making it is not liable for any errors committed. *People v. Morgan*, 65 Barb. 473. Assessors must act upon legal proof, when the statute under which they act gives them the means of obtaining it. But when they are required to act upon evidence that is not what is known as legal evidence, their action is valid, however the evidence may be obtained. *Id.* After assessors have considered and decided the question whether the required number of tax payers have signed consents to the bonding of a town, such determination is so far final that a *certiorari* may issue to bring the proceedings up for review. *Id.*

When assessors have jurisdiction of the person and subject-matter, for the purpose of an assessment of property for taxation, they act judicially; and while the assessment remains in force, no action will lie for the recovery of the tax so paid, although the property was not, by law, the subject of taxation. *Bank of Commonwealth v. Mayor, etc., of New York*, 43 N. Y. 184.

In cases where assessors have jurisdiction, they are to decide all questions of law, as well as of fact. It is for them to determine, where there are facts calling for the exercise of their judgment, whether land is to be assessed as resident or non-resident land. Whatever may be their decision, they have the immunity of judicial officers. Both they and all per

sons who act upon their assessment, in enforcing the tax, are protected; and the tax, after it has reached the treasury of the county, cannot be collected back. The decision of the assessors cannot be attacked collaterally. *Buffalo & State Line R. R. Co. v. Supervisors of Erie*, 48 N. Y. 93. Yet a flagrant disregard of the facts, or assessing in opposition to the clear and undisputed facts, where the application of the statute could not be doubtful, might present a case in which the assessors would be without jurisdiction. *Id.*

Assessors are *quasi* judicial officers. Their assessments are in the nature of judgments. They are not subject to an action to review, modify or reverse their judgments, nor to hold them to personal liability, when acting within their jurisdiction. *Western R. R. Co. v. Nolan*, 48 N. Y. 513. They are not personally liable for errors or mistakes in an assessment, where they have jurisdiction, and act within the scope of their authority; but if they exceed their powers, and act without authority and in contravention of the statute prescribing and regulating their duties, they are civilly liable to a person injured by their action. *Clark v. Norton*, 49 N. Y. 243.

A substantial compliance with the statute, in the measures preliminary to the taxation of persons and property, in all matters which are of the substance of the procedure, and designed for the protection of the tax payer, is a condition precedent to the legality and validity of the tax. *Westfall v. Preston*, 49 N. Y. 349.

Assessors have no power to determine what property is taxable; that is the province of the legislature; and for an erroneous decision on the part of the assessors, as to what is taxable property, they are liable, the same as for an erroneous decision as to who is a taxable inhabitant; and an assessment founded thereon is void. *National Bank of Chemung v. City of Elmira*, 53 N. Y. 49. A decision of assessors, in these cases, may be attacked collaterally. Accordingly, *held*, that an assessment upon the capi

tal stock and a tax against a bank, in violation of the provisions of the act authorizing the taxation of stockholders of banks, etc. (Laws of 1866, ch. 761), which prohibits the assessment of a tax upon such capital stock, were void, and that an action would lie on behalf of the bank against a municipal corporation, to recover the amount collected by it, upon such assessment for municipal taxes. *Id.* The remedy by *certiorari* is not adequate in such case. That is appropriate to review erroneous assessments; not when property has been taken in violation of law, under an illegal assessment. *Id.*

Where a town board of assessors had performed certain duties of a judicial character, in pursuance of a statute; *held*, that a delay of over two years in applying for a writ of *certiorari* to review the same was a sufficient reason for dismissing such writ. *People v. Hill*, 1 N. Y. Sup. Ct. Rep. 154.

*Correction of errors in assessments by board of supervisors.* The board of supervisors of any county, except New York and Kings, may, by a vote of two-thirds of all the members elected thereto, on the recommendation of the county court of such county, correct any manifest, clerical or other error in any assessment or returns made by any town officer to such board, or which shall properly come before such board for their action, confirmation or review; and upon the order of such court, made on application and notice, such board shall refund to such person the amount collected from the person aggrieved, of any tax illegally or improperly assessed or levied. Laws of 1871, ch. 695.

It has been *held*, that the omission of assessors to deduct the assessed value of the real estate of a bank from the value of its shares of stock, is not "a manifest clerical or other error," to be corrected under the above act. *Matter of Farmers' National Bank of Hudson*, 1 N. Y. Sup. Ct. Rep. 383.

*To prepare assessment roll.* Having made all requisite inquiries, and required all needful information, the statute requires assessors to proceed as follows :

They shall prepare an assessment roll, in which they shall set down in four separate columns, and according to the best information in their power :

1. In the first column, the names of all the taxable inhabitants in the town or ward, as the case may be.

2. In the second column, the quantity of land to be taxed to each person.

3. In the third column, the full value of such land, according to the definition of the term "land," as given in the first title of this chapter.

4. In the fourth column, the full value of all the taxable personal property owned by such person, after deducting the just debts owing by him. 1 R. S. 390. See Form No. 16.

*Trustee, guardian, etc.* Where a person is assessed as trustee, guardian, executor, or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment; and he shall be assessed for the value of the real estate held by him in such representative character, at the full value thereof, and for the personal property held by him in such representative character, deducting from such personal property the just debts due from him in such representative character. 1 R. S. 391.

The assessors should exercise great care in making the assessment roll, to comply strictly with the require-

ments of the above sections, and to state sufficient to make it accurately understood.

*Care to be used.* Especial care should be used to state the name accurately, so that the party assessed may have full notice. See *Bennett v. City of Buffalo*, 17 N. Y. 383.

An error in the name, however, is not necessarily fatal to the assessment. Thus, where the name of Henry D. Van Voorhis was inserted in the assessment roll, instead of William H. Van Voorhis, the name of the person intended, and it was shown that he was frequently called and known in the town as *Henry*, the court held the assessment good. *Van Voorhis v. Budd*, 39 Barb. 479.

Care should also be taken to insert the name of no person who was not, on the first day of July, an inhabitant of the town or ward. The fact, that a person was an inhabitant at the time the assessor called upon him to make his preliminary inquiries, is not sufficient. He must be a resident on the day the assessment is made—that is, on the first day of July—otherwise the assessors will be personally liable for any damages occasioned by inserting his name and assessing his property.

In the case of *The People v. Supervisors of Chenango* (11 N. Y. 563), it appeared that one of the assessors of the town of Oxford, in Chenango county, while engaged as such assessor in ascertaining by diligent inquiry the names of the taxable inhabitants, and the taxable property, in the district assigned to him on the division of the town into districts by the assessors, called, on the 22d day of May, at the dwelling-house

of Mygatt, the relator, situate in said district, where he and his family were then residing, and informed him that he had come to make an assessment of his real and personal property. Mygatt at first replied, that he had nothing to say on the subject; but after the assessor had noted down his real property and requested information concerning his personal estate, he stated that he had intended to remove and was about to remove to Oswego, in the county of Oswego, and objected to being assessed for his personal property in Oxford. The assessor then said that he was assessing that part of his district, and as he found him residing there and an inhabitant thereof, it was his duty to assess him, and proceeded to assess his personal property at \$10,000. Soon after this, and during the same month of May, Mygatt removed to Oswego, where he was subsequently the same year assessed on the same property, and paid the assessment. Mygatt refused to pay the tax assessed in the town of Oxford, and his property was seized to satisfy the amount. Mygatt applied for a writ of *mandamus* to compel the supervisors of Chenango county to refund to him the amount of the tax and costs. The court of appeals denied the *mandamus*, on the ground that it was not the proper remedy, but decided that the assessment in the town of Oxford was illegal and void. The court held that the assessment could only be made by all of the assessors or a majority of them after consultation, and that it could only be made after the first day of July. That all that is done by the assessor, in taking down names and entering descriptions and amounts previous to the first day of July,

is merely the obtaining of information preliminary to the assessment to be made when all the assessors meet in July and examine and correct, and alter such memoranda, when they make out the assessment roll. The court, by Parker, J., added: "But had not the relator a remedy against the assessors? I think they acted without jurisdiction, and that their proceedings were void. In assessing personal property, they had jurisdiction only over residents. I concede that assessors act judicially. If Mygatt had been a resident when assessed, and they had erred as to the amount, they would not have been liable for error. But if they had no jurisdiction to act at all, they are liable. It is only when acting within their limited jurisdiction that they can be protected as acting judicially. If this is so they are liable and might have been prosecuted for their act, in subjecting the relator to the payment of an unfounded and illegal tax. The relator had, therefore, a legal remedy by action." Mygatt having failed to get a mandamus against the supervisors, brought an action against Washburn, the assessor, who claimed to make the assessment to recover the damage sustained. The case was carried to the court of appeals. *Mygatt v. Washburn*, 15 N. Y. 316. That court held, as before, that the assessment was not made till the first day of July, and that if a person removed from the town before that day, he was not an inhabitant when the assessment was made, and could not be assessed. That if there is any change of residence or ownership after that day, it does not affect the assessment roll. The inquiries are then complete. Any change which the assessors are

authorized to make after that time, are only such as may be required to correct mistakes. Denio, Ch. J., who delivered the opinion of the court, said: "When the statute speaks of the time 'when the assessment is made,' it refers to the binding and conclusive act which designates the tax payer and the amount of taxable property. If I am correct, in what has been said, it follows that the time referred to in the statute is the first day of July." The assessor was held personally liable as having acted without jurisdiction.

In estimating the value of the real and personal property liable to taxation, the assessors are to assess it at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor. The action of the assessors in fixing the amount is judicial and conclusive, so long as they confine themselves within the statute rule, however grossly they may err. But if it appear from the assessment that they have added to it, upon a ground which is unauthorized by the statute to that extent, their act may be declared void. *Albany, etc., v. Canaan*, 16 Barb. 244.

Assessors are subordinate officers, and must act within the authority given them. When, in a given case, they have no power to act at all, either as to person or property, their acts are void; and when their right to act depends upon the existence of some fact, an assessment founded upon an erroneous determination by them as to the existence of such fact, is illegal. They cannot acquire jurisdiction by determining that they have it. *National Bank of Chemung v. City of Elmira*, 53 N. Y. 49.

In assessing personal property, the assessors are to remember that the products of any State of the United States, consigned to this State on commission, for the benefit of the owner thereof, shall not be assessed to such agent, and also that agents of moneyed corporations or capitalists are not liable to taxation for any moneys in their possession or under their control, transmitted to them for the purposes of investment or otherwise. 1 R. S. 389. So bonds, mortgages, notes, contracts, accounts, and other demands, belonging to

a non-resident, sent to this State for collection, or deposited here for such purpose, are not to be taxed." 1 R. S. 419.

*Lands of non-residents, how assessed.* The lands of non-residents shall be designated in the same assessment roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections. 1 R. S. 391, § 11.

If the land to be assessed be a tract which is subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows :

1. They shall designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded.

2. If they can obtain correct information of the subdivisions they shall put down in their assessment rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the names of their owners, beginning at the lowest number and proceeding in numerical order to the highest.

3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein, liable to taxation.

4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity.

5. If such quantity be a full lot, it shall be designated by the number alone ; if it be a part of a lot, the part must be designated by boundaries, or in some other way by which it may be known. Id. § 12.

If the land so to be assessed be a tract which is not subdivided, or if its subdivisions can not be ascertained by the assessors, they shall proceed as follows :

1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they can not obtain correct information of the subdivisions, as the case may be.

2. They shall set down, in the proper column, the quantity and valuation as above directed.

3. If the quantity to be assessed be the whole tract, such a description by its name or boundaries will be sufficient ; but if a part only is liable to taxation, that part or the part not liable, must be particularly described.

4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed ; and if they can not otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made, for the purpose of ascertaining the situation and quantity of every such occupied part.

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered, in like manner to the assessors.

6. The assessors shall then complete the assessment of the tract, and shall deposit the map in the town clerk's office, for the information of the future assessors. And the expense of making such survey and

maps shall be immediately repaid to the supervisor, out of the county treasury ; and shall be added by the board of supervisors to the tract, distinguishing it from the ordinary tax. 1 R. S. 391, § 13. See Form No. 16.

Since the act of 1855, chapter 427, upon return by the town collector of a tax laid upon real estate, uncollected for want of goods and chattels of which to make the same, the land is to be classed as non-resident, as to such unpaid tax ; and all proceedings for the collection thereof must thereafter be had as if it was the land of a non-resident, pursuant to that act. And by Laws 1876, chapter 101, amending the act of 1855, a similar provision is made in regard to lands owned by railroad companies upon which the tax is returned unpaid. *Newman v. Supervisors of Livingston*, 45 N. Y. 676. Where the board of supervisors assume to add the amount of a tax so returned, to the assessment roll of residents, and thus charge it upon one who has succeeded to the occupation of the land assessed, their action is without jurisdiction and void, and the tax thus laid against him is illegal. *Id.* If such illegal tax is collected, and paid into the treasury of a county, an action as for money had and received will lie against the county, for its recovery. *Id.*

The real estate of railroad corporations, occupied and used by them for railroad purposes, cannot properly be assessed as "non-resident lands." *People v. Barker*, 48 N. Y. 70 ; *People v. Cassity*, 46 *id.* 46 ; *People v. Fredericks*, 48 Barb. 173. But see Laws 1876, ch. 101, referred to above.

*Unoccupied lands.* Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as hereinafter provided. Id. 389.

*Manner of describing.* An accurate designation or description of the land assessed is essential to the validity of the assessment of non-resident lands. The assessment of such lands is made with the ultimate view of collecting the tax by advertisement and sale of the land, if it should not be voluntarily paid. The assessment must contain a true designation or description, in order that the description or designation in the advertisement which comes from the assessment roll may not mislead the owner.

An assessment of non-resident land is fatally defective and void if it contain such a falsity in the designation or description of the parcel assessed as might probably mislead the owner and prevent him from ascertaining by the notices that his land was to be sold or redeemed. Such a mistake or falsity defeats one of the obvious and just purposes of the statute — that of giving the owner an opportunity of preventing the sale by paying the tax. *Tallman v. White*, 2 N. Y. 66.

Thus, when the assessment roll and the advertise-

ment of sale taken from such roll described the lands as lying *in the village of Lodi*, when in fact they lay in another part of the same town known as the village of Syracuse, the court held the mistake fatal, and a sale under such assessment void. *Tallman v. White*, 2 N Y. 66.

So where the assessors designated a lot as 228, when it should have been 227, the court held the mistake fatal, although the tract in which the lot was situated was accurately described, as were also the boundaries of the lot assessed. *Dike v. Lewis*, 4 Denio, 237; 2 Barb. 344.

Assessors are not to insert in the assessment roll the names of non-resident owners of real property. In this case the land is to be designated and assessed without reference to or naming the owner. *N. Y. & Harlem R. R. v. Lyon*, 16 Barb. 657.

The statute requires that, instead of the name of the owner, if the lot is part of a tract distinguished by a name, the name of the tract shall be given; if not so distinguished, or the name is unknown, then by designating the lands by which the tract is bounded. Subdivision five, allowing designation by the number of a lot, means merely designation of the quantity, and does not dispense with the description. *Hubbel v. Weldon*, Hill & D. Sup. 139.

*Survey of non-resident lands.* Whenever it shall be deemed necessary by the assessors of any town, to have an actual survey made to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the super-

visor, who shall cause the necessary surveys to be made at the expense of the town. 1 R. S. 392.

*Rule of valuation.* All real and personal estate liable to taxation, shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor. 1 R. S. 393, as amended 1851, ch. 176.

The preceding section shall be followed in all assessments made under this chapter, except when the assessors shall be specially required by law to observe a different rule. *Id.*

A departure, by assessors, from the standard fixed by statute for estimating the value of property placed upon the assessment roll cannot be corrected upon *certiorari*. Nor can their failure to assess the property of a corporation, as required, be so corrected. The court may reverse the assessment as made, and direct a re-assessment; but after the roll has been delivered to the board of supervisors, and the power of the assessors over it has ceased, a *certiorari* should not be allowed; and if allowed should be quashed, even after return made. *People v. Delaney*, 49 N. Y. 655.

*Property omitted, how taxed.* Whenever it shall appear to the assessors of any town, city or ward in this State, that any land or property legally liable to taxation in said town, city or ward has been omitted in the assessment roll of the next preceding year, it shall be the duty of said assessors, upon the applica-

tion of any three tax payers in said town, city or ward, who shall consider themselves aggrieved, to enter said land or property in the assessment roll of the current year, at the valuation of the year in which said tax was omitted, or, if not then valued, at the valuation of the preceding year, in a separate line from the valuation of the current year. Laws 1865, ch. 453.

The board of supervisors of the county or city in which said town, city or ward is situated, at the next annual meeting, upon the petition of the assessors of said town, city or ward that such land or property was not taxed on the preceding year, shall proceed to levy a tax on the same at the rate per cent of the tax imposed upon land or property in said town, city or ward on the preceding year; also, upon the petition of the assessors of any town, city or ward that any land or property in any town, city or ward in the State has been omitted in the assessment roll of the current year, they shall insert the same in the assessment roll of said town, city or ward at the valuation of the preceding year, and tax the same at the rate per cent of the current year. *Id.*

The whole amount of tax levied upon land or property omitted in the tax levy of the preceding year, shall be deducted from the aggregate of taxation to be levied upon said town, city or ward for the current year, before such tax is levied, and shall be collected by the same authority and in the same manner as the ordinary taxes of the current year are collected. *Id.*

Whenever it is ascertained that property has been omitted in the assessment roll of the next preceding year, and application is made as prescribed by the above statute, the duty of the assessors is ministerial

and they have no discretion. They must enter the property at the valuation of the year preceding, if it was valued up on the assessment roll of that year, if not, of the year preceding that. They cannot change the valuation. *People v. Goff*, 52 N.Y. 434. If the property was not valued in one of those years, the assessors have no power to enter it upon the assessment roll. *Id.*

*Roll, when to be completed; notice.* The assessors shall complete their assessment rolls on or before the first day of August, in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall forthwith cause notices thereof to be put up at three or more public places in their town or ward. 1 R. S. 392, as amended 1858, ch. 110.

*Contents of notice.* Such notices shall set forth that the assessors have completed their assessment roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August, and that on that day the assessors will meet, at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors on such day, to meet at the time and place specified, and hear and examine all complaints in relation to such assessment that may be brought before them; and they are hereby empowered, and it shall be their duty, to adjourn from time to time, as may be necessary, to hear and determine, in accordance with the rule prescribed by section fifteen of said title two, such complaints. But in the several cities of this State, the notices required by this section may con-

form to the requirements of the respective laws regulating the time, place and manner for revising assessments in said cities in all cases where a different time, place and manner is prescribed by said laws from that mentioned in this act. 1 R. S. 392, § 20, as amended 1851, ch. 176. For form of notice see Form No. 17.

The term "person or persons" in the above section includes corporations. Laws 1857, ch. 536.

The giving of the notice, as prescribed above, is essential to the validity of the tax, it being one of the things to be done by the assessors to obtain jurisdiction over the subject. The full time required by statute must be given or the proceeding will be void *Wheeler v. Mills*, 40 Barb. 644.

After the deposit of an assessment roll for examination, the assessors cannot add names thereto, nor add to the assessments of individuals other property, or change the character of the property assessed. When the roll is completed, the duty of the assessors is fully performed, except in the matter of a review of the assessment as made, and as permitted by statute. Although a person purchasing property, after the completion of the roll, agrees to pay the tax thereon, this confers no jurisdiction upon the assessors to change the assessment; nor does it operate as a waiver of the legal rights of the purchaser. It is a matter resting in contract between the parties, and is to be enforced in the usual way. *Clark v. Norton*, 49 N. Y. 243; S. C., 58 Barb. 434.

*Penalty for neglect.* If the assessors shall willfully neglect to hold the meeting specified in the last preceding section, each assessor so neglecting shall be liable to a penalty of twenty dollars, to be sued for

and recovered before any court having jurisdiction thereof, by the supervisor of the town, for the use of the poor of the same town; and in case of such neglect to meet for review, any person aggrieved by the assessment of the assessors may appeal to the board of supervisors, at their next meeting, who shall have power to review and correct such assessment. Laws 1851, ch. 176.

*Inspection of roll.* The assessor with whom such assessment roll is left, shall submit the same, during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose. Laws 1851, ch. 176.

*Reduction of valuation.* Whenever any person, on his own behalf, or on behalf of those whom he may represent, shall apply to the assessors of any town or ward to reduce the value of his real and personal estate, as set down in the assessment roll, it shall be the duty of such assessors to examine such person under oath touching the value of his or their said real or personal estate; and after such examination, and such other supplementary evidence, under oath, as shall be presented by the party or person aggrieved, they shall fix the value thereof at such sum as they may deem just, under the rule prescribed by section 17 of this title; but if such person shall refuse to answer any question as to the value of his real or personal estate, or the amount thereof, or present sufficient supplementary evidence, under oath, to justify a reduction, the said assessors shall not reduce the value of such real or personal estate. The exami-

nation so taken shall be written, and shall be subscribed by the person examined. and shall be filed in the office of the town clerk of the town or city in which such assessment shall be made; and any person who shall willfully swear false on such examination before the assessors, shall be deemed guilty of willful and corrupt perjury. It shall also be the duty of the assessors, whenever the valuation fixed by them, after such examination, shall exceed that sworn to by the aggrieved party or person, to indorse on the written examination the words, "Disagreed to by the undersigned assessors, under the rule prescribed for making assessments, by section fifteen, article two, title two, chapter thirteen, part one of the Revised Statutes, and in view of the obligations imposed by the deposition and oath, subscribed and made on the completion of the assessment roll, to which this disagreement refers." It shall be the duty of the assessors on the same occasion, to furnish the aggrieved party or person a duplicate copy of the before mentioned written examination, together with the indorsement of disagreement aforesaid, duly signed. Laws 1857, ch. 536, § 5.

The assessors have power to administer the oath to any person applying to them under the provisions of the above section. Laws 1851, ch. 176.

*Powers of assessors on application to reduce.* Assessors are not bound to reduce the value of the property of any party deeming himself aggrieved to the amount fixed in his sworn statement and examination before them, but they are to fix the value after such statement, as they may deem just, having in view the

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general duty to assess property "at its full and true value." *People v. Fredericks*, 48 Barb. 173.

There should be nothing capricious or arbitrary, however, in their determination, and when they have no grounds to fix a valuation different from that sworn to by the person applying for such reduction, they should take and follow his statement under oath. *Raplee v. Reddy*, 43 Barb. 539.

Where a person assessed applied, under the above provision, to have an assessment against him stricken from the roll, on the ground that he was justly indebted to an amount exceeding his personal property, and upon being examined by the assessors in respect to the amount he was owing and the persons to whom he was indebted, stated that he could not remember to whom he owed it, it was held that the assessors were right in refusing to reduce the assessment under the evidence before them, and would have been guilty of a clear breach of public duty had they acted otherwise; and that under such evidence, or lack of evidence, the assessors may act upon the assumption, that the claim is a mere pretense to avoid the payment of his just share of the public burdens. *Vose v. Willard*, 47 Barb. 320.

Assessors have no jurisdiction or power, on the day appointed for the review of their completed roll, to assess persons and property not previously assessed and entered on the roll. The power to review or modify assessments on that day extends only to those against which complaints are made. As to non-complainants, the roll, as completed on the first day of August, is final as to persons, property and valuation.

*Clark v. Norton*, 58 Barb. 434; S. C., 3 Lans. 484. The statute requires the assessors to ascertain the persons and property, within their respective towns, liable to assessment, between the first days of May and July in each year, and to complete their roll by the first day of August, when, on complaint of any person aggrieved, they have power to reduce the valuation, or strike out an assessment; but it gives no power to add names or property after the first day of July, or to strike from the roll, after the first day of August, except as authorized on the day of review. *Id.*

Although an application to assessors, for the correction of an assessment, merely asks to have it struck from the roll, yet if the facts disclosed show that it ought not to be stricken off, but should be reduced, it is the duty of the assessors to make the reduction. *People v. Assessors of Albany*, 40 N. Y. 154. Where assessors make no objection to the form of an application to correct an assessment, but act upon it as being the proper statutory evidence, and decide that it does not show sufficient cause for the correction, they cannot raise an objection to its form, on a *certiorari* to review their proceedings. *Id.*

Assessors have no power, on the day appointed for the review of their roll, to transfer an assessment for real property against the person who owned it when assessed, to another who has purchased the property after the first of July, and then assess the vendor, on the same roll, for personal property, in the same amount as the valuation of such real property. *Clark v. Norton*, 58 Barb. 434; S. C., 3 Lans. 484.

Assessors act in a judicial capacity, in hearing parties aggrieved, and must be governed by the evidence presented to them, on an application to correct an assessment. *People v. Howland*, 61 Barb. 273. Where, upon an application to correct an assessment, there is no evidence before the assessors, on the subject of the value of the real estate, except the affidavits produced by the owner, they, if uncontradicted, must be considered controlling and conclusive. *Id.* But in the *People v. Barker*, 48 N. Y. 70, it is held that since the act of 1851, ch. 176, assessors are not bound by the affidavit presented by an owner of property taxed, upon complaint in relation to the assessment thereof. The affidavit is no longer conclusive, but is evidence to be considered by them, with other means of information in their power; and, upon the whole, their own judgment is to be formed as to the value of the property.

By the statutes of this State, assessors are made the judges of the value of property, for the purpose of taxation. They are not bound by proof produced before them, but are required to exercise their own judgment notwithstanding such proof; and the case must be an extraordinary one which will authorize the supreme court to review their judgment, upon *certiorari*. *People v. Trustees of Ogdensburgh*, 48 N. Y. 390. If, however, assessors place upon the roll property not liable to taxation, and they refuse, upon

the application of the person aggrieved, to strike it off, their action can be reviewed upon *certiorari*. *Id*

Where assessed the real estate of a corporation at \$125,000, and on application, refused to correct the assessment, although the highest valuation fixed for such real estate, by the uncontradicted evidence before them, was but \$45,000; *held*, that they should have corrected the assessment, by striking out the sum of \$125,000 as the valuation of the real estate, and inserting the sum of \$45,000 in its place. *People v. Howland*, 61 Barb. 273. *Held*, also, that after having deducted from the amount of capital paid in, or secured, such sum of \$45,000 for the value of the real estate, it was proper for the assessors to assess the remaining capital as personal estate, at its actual value as shown by the evidence before them. *Id*.

Assessors have jurisdiction to make an assessment, and when it is made, the statute gives them the right to retain it as made and to disregard and "disagree to" the written examination of a person applying for a reduction, if it is not satisfactory to them. *Id*.

The person applying must sign the written statement, and one who fails so to sign it has no right to have the deduction claimed by him made, even though his examination shows him to be clearly entitled to it. *Vose v. Willard*, 47 Barb. 320.

In hearing and determining an application to reduce an assessment all the assessors should be pres-

ent and take part, but the voice of the majority will be sufficient.

*Power to correct.* Assessors have power to correct an assessment (except to increase an estimate of property after the roll has been deposited with one of their number for examination), at any time before their roll is delivered to the supervisor. *The People v. Supervisors of Westchester*, 15 Barb. 607.

Assessors act in a judicial capacity, in hearing parties aggrieved, and must be governed by the evidence presented to them, on application to correct the assessment. *People v. Howland*, 61 Barb. 273.

*Assessment roll to be sworn to.* When the assessors, or a majority of them, shall have completed their roll, they shall severally appear before one of the justices of the town or city in which they shall reside, and shall severally make and subscribe before such justice an oath, in the following form :

We, the undersigned, do severally depose and swear that we have set down, in the foregoing assessment roll, all the real estate in the (town or ward, as the case may be), according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor; and also that the said assessment roll contains a true statement of the aggre-

gate amount of the taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full and true value thereof, according to our best judgment and belief.

Which oath shall be written on said roll, signed by the assessors, and certified by the justice, and shall be in place of the official certificate now required by law; and every assessor who shall willfully swear false in taking and subscribing said oath, shall be deemed guilty of, and liable to the penalties of willful and corrupt perjury. Laws 1851, chap. 176, § 8. See Form No. 18.

The certificate must be a strict compliance with the statute, or it will give the supervisors no jurisdiction. *Van Rensselaer v. Whitbeck*, 7 N. Y. 517.

The court of appeals, however, in *Parish v. Golden* (35 N. Y. 462), though not overruling the above case, thought that the principle ought not to be extended, and held, that if the certificate contains substantially the matters required by statute, the defects may be disregarded. Also, that if the omitted part is material, it may be supplied and corrected.

The court, in that case, even thought that the statute requiring the affidavit of the assessors was merely *directory* and not jurisdictional, and that it might be made after the delivery of the assessment roll to the supervisors.

That point, however, was not in issue, and the question may be regarded as open.

A roll completed, in readiness for review on the 26th, and verified on the 29th day of July, complies with the above statute. *Westfall v. Gere*, 3 Lans. 151. Even if it could be held to be the intention of the statute that the assessment roll should not be verified until after the review day (August 1), its being verified on a previous day would be a mere irregularity, which would not affect the jurisdiction of the supervisors to estimate and insert the taxes therein. *Id.*

It is not necessary that the affidavits of the assessors, attached to the roll, should comply literally with the statute. A substantial compliance is sufficient. *Buffalo & State Line R. R. Co. v. Supervisors of Erie*. 48 N. Y. 93.

For the purpose of deposit for inspection, the assessment roll is to be completed on or before the 1st of August; and after that time, the assessors have no jurisdiction over the persons of the tax payers, the roll, or the subject-matter of the assessment for the current year, save for the purpose of reviewing the assessments already made, and verifying the roll after such review. *Westfall v. Preston*, 49 N. Y. 349. For the purpose of verification and delivery to the supervisor, the roll cannot be completed until after the time fixed for its final review and correction, to wit, the third Tuesday of August. An affidavit of the assessors thereto, made prior to that time, is a nullity; and where the defect appears upon the face of the paper, by the date of the jurat, it confers no jurisdiction upon the board of supervisors to impose a tax upon persons or property named therein, or to

sign a warrant to the collector. As the affidavit is made a part of the assessment roll delivered to the collector, and the want of jurisdiction in the board of supervisors is thus disclosed upon the face of the papers, the warrant furnishes no protection to the collector. *Id.*

An assessment roll, not verified by one of the assessors, and not accompanied by a certificate of the other assessors stating the cause of such omission (1 R. S. 394, § 30) is defective; and the omission to properly verify it is fatal to its validity. *Bellinger v. Gray*, 51 N. Y. 610.

The oath of assessors to the affidavit attached to their assessment roll, must be taken before a justice of the peace. Laws of 1851, ch. 176, § 8. A deputy county clerk has no authority to administer the same. *National Bank of Chemung v. City of Elmira*, 53 N. Y. 49.

A mandamus will not lie to compel assessors to make an oath to their assessment roll, as prescribed by § 8 of chapter 176 of the Laws of 1851, to wit, that they estimated the value of the real estate "at the sums which a majority of the assessors have decided to be the true and full value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor," where it appears that, in fact, they have only estimated it at a fraction of its full value. *People v. Fowler*, 55 N. Y. 252. Whatever duty the assessors may have omitted, they owe no duty, and are not required to commit a crime; and courts will not compel them so to do. *Id.*

*Roll to be delivered to supervisor.* The roll, thus certified, shall, on or before the first day of September, in every year, be delivered by the assessors of each ward in the city of New York to the clerk of the city, and by the assessors of every other town or ward, to the supervisor thereof, who shall deliver the same to the board of supervisors at their next meeting. 1 R. S. 394.

*Neglect of assessors.* If any assessor shall neglect, or from any cause omit to perform his duties, the other assessors, or either of them, of the town or ward, shall perform such duties, and shall certify to the supervisors with their assessment roll the name of such delinquent assessor, stating therein the cause of such omission. Id. § 30.

If any assessor shall willfully refuse or neglect to perform any of the duties required of him by this chapter, he shall forfeit to the people of this State the sum of fifty dollars. Id. 394.

*Duty of town and city clerks.* The clerks of the cities of New York, Albany, Hudson, Schenectady and Troy, and the town clerks of the several towns, shall, yearly, before the first day of October in each year, certify and deliver to the supervisors of their respective towns, the names of all the assessors and collectors in their respective cities and towns, and the same shall be delivered to the board of supervisors at their next meeting. Id. 419.

*Duty of board of supervisors.* The boards of supervisors of the several counties, at every annual meeting,

shall transmit to the comptroller the names and places of abode of the town clerks and assessors in their respective counties, who shall have willfully refused or neglected to perform the duties required of them in this chapter; and the comptroller shall thereupon give notice to the district-attorneys of the proper counties, to the end that they may prosecute such delinquent town clerks or assessors for the penalties incurred by them. 1 R. S. 419.

*Forms and instructions.* The comptroller shall from time to time, at his discretion, transmit blank forms of assessment rolls and of returns of unpaid taxes to the several county treasurers in this State, together with such instructions as he shall think useful, for the purpose of enforcing the uniform and proper execution of this chapter.

The county treasurers shall distribute such of the said forms and instructions, as shall have been intended for use of the assessors, among the town clerks, in their respective counties, who shall deliver the same to the assessors in their respective towns. The county treasurer shall also transmit or deliver a copy of such forms and instructions to each of the assessors in any city in his county. Id. 420.

## SECTION VII.

## ON RENTS AND DEBTS OWING NON-RESIDENTS.

It shall be the duty of the assessors of each town and ward, while engaged in ascertaining the taxable property therein, by diligent inquiry, to ascertain the amount of rents reserved in any leases in fee, or for one or more lives, or for a term of years exceeding twenty-one years, and chargeable upon lands within such town or ward, which rents shall be assessed to the person or persons entitled to receive the same, as personal estate, which it is hereby declared to be, for the purpose of taxation under this act, at a principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents; and in case such rents are payable in any other thing except money, the value of such annual rents in money shall be ascertained by the assessors, and the same shall be assessed in manner aforesaid. And in case the name or names of the person or persons entitled to receive the rent reserved upon any lot or parcel of land on which any rent is reserved, as provided in this section, cannot be ascertained by the assessors, then the same shall be assessed against the tenant or tenants in possession of said lot as rents reserved. Laws of 1846, ch. 327, as amended, Laws of 1873, ch. 809.

The assessor shall, in all cases of assessments, under chapter 327 of the Laws of 1846, specify in the assessment rolls each rent so assessed, and the value fixed upon articles, other than money, in which such rents

are payable, and whenever assessments are made against any person in any town or ward in which he does not reside, the board of supervisors of the county to which such assessments are returned, shall have in all respects as full power and authority, and it shall be their duty, to correct such assessments as to the valuation of the rents, and as to the gross amount for which such person shall be assessed, as the assessors have as to a resident of the town; and such board of supervisors may reduce the amount of such assessments in the respective towns or wards of the county, in proportion or otherwise, as the nature of the corrections require to make such assessment just. Laws 1858, ch. 357.

The board of supervisors in each county shall assess the taxes to be raised for town, county and State purposes upon the person or persons entitled to receive such rents within the town or ward where the lands upon which such rents are reserved and situated, in the same manner, and to the same extent, as any personal estate of the inhabitants of such town. And in case the name or names of the person or persons entitled to receive the rents upon any lot or parcel of land has not been ascertained by the assessor, then the board of supervisors shall assess the tax authorized by the act of 1846 to be levied and collected of the tenant or tenants in possession of the lands upon which said rent is reserved; said tenant to be reimbursed for the tax upon the rent reserved so collected of him, in the manner provided in section three of this act. Laws of 1846, ch. 327, § 2, as amended, Laws of 1873, ch. 809.

If such tax shall not be paid, the collector, or the person authorized by law to receive said tax, shall levy the same by distress and sale of the goods and chattels of the person against whom the same is assessed, within the town or ward of such collector in the same manner as if such person was an inhabitant of such town or ward. And if no sufficient goods or chattels belonging to the person against whom the same is assessed can be found in said town or ward, then in that case it shall be the duty of the collector to levy and collect the same by distress and sale of the goods and chattels of the tenant or lessee in possession of the demised premises on which said rent is reserved; and the tenant, lessee in possession, or person in possession, of said premises, may abate from the amount of any rent reserved upon said premises either due or to grow due thereon, the amount of tax so paid by or collected of him upon the rents so reserved, with interest on the amount so paid from the time of the payment of said tax; and the warrant for the collection of said tax, issued by the board of supervisors to the collector of any town in which said tax shall be assessed, shall direct the collection of the same in accordance with the provisions of this section. Laws of 1846, ch. 327, § 3, as amended, Laws of 1873, ch. 809, § 3.

The object of the above provision for taxing rents was undoubtedly to reach certain manor leases in this State, but in order to reach them, a general law was deemed necessary and expedient. The law makes no discrimination between agricultural or city lands, and they are assessed alike. Such rents are

taxable, although less than twenty-one years of the original term remains unexpired at the time of the assessment. *Buffalo v. Le Couteux*, 15 N. Y. 451.

The provisions of the Revised Statutes relative to the assessment and collection of taxes are not repealed by those of chapter 327 of the Laws of 1846, relating to the assessment of rents reserved in leases in fee; or by those of the amendatory act of 1858; but are applicable to the assessment of such rents. *Cruger v. Dougherty*, 1 Lans. 464; S. C. aff'd, 43 N. Y. 107. An assessment for rents reserved must, under the acts of 1846 and 1858, be made "to the person or persons entitled to receive the same;" and *each* rent so assessed must be specified. *Id.* An assessment entered as "The K. patent; J. K. and others, legal heirs of J. K., late of the city of New York, deceased, or their heirs or assigns, for rents reserved in the town of K., etc.," is void, because it is to several persons, in the alternative, and not to any one in particular, and because each rent assessed is not specified in the assessment roll. *Id.*

Where rents accruing from perpetual leases had, in 1864, been in fact assessed, but to a person not the owner of the rents, and upon petition duly made to the assessors, the same property was put on the roll of 1865 and assessed to the true owner, and a tax levied upon it for the year 1864, it was held that such re-assessment was legal and valid. *Overing v. Foote*, 43 N. Y. 290. Where assessors had opened their roll for inspection, in pursuance of notice given by them, and opposite the name of the plaintiff had left a blank, which was to be filled up with a description of lands leased by him, as soon as they could discover whether any had been re-leased within the year; and where, after the roll was opened, the plaintiff's agent examined the same, and being informed of the assessors' intention, he afterward furnished them with a list of the plaintiff's property, which was in-



## OWING NON-RESIDENTS.

serted in the roll, about the middle of July, it was *held* that the assessment was regular, and a tax levied thereunder was valid. *Id.*

The assessors of the towns of K. and D., in Delaware county, assessed certain rents reserved on leases in fee and payable to a non-resident, at the full value of the principal sum represented by them, while they assessed the remaining property in the towns at not over one-third of its value. *Held* that the board of supervisors of Delaware had, under Laws of 1858, chapter 357, the power to correct such inequality so as to make the assessment just; and that the refusal of such board to interfere with such assessment upon the petition of the owner of the rents was error, for which a mandamus would be allowed. *People v. Supervisors of Delaware*, 4 N. Y. Sup. Rep. 336.

*Debts due non-residents.* All debts owing by inhabitants of this State to persons not residing within the United States, for the purchase of any real estate, shall be deemed personal property, within the town or county where the debtor resides, and as such shall be liable to taxation in the same manner and to the same extent as the personal estate of citizens of this State. Laws 1851, ch. 371, § 1.

*Agents of non-resident creditor to report to county treasurer.* If there shall reside in any county of this State an agent of any non-resident creditor having debts owing to him of the description mentioned in the first section of this act, he shall, on or before the twenty-fifth day of July in each year, furnish to the county treasurer of each county where such debtor

resides, the true and accurate amount of debts of the description mentioned in the first section of this act, which were owing on the first day of January preceding, to the principal of such agent, in each town in such county, which shall be verified by the oath of such agent taken before any officer authorized to administer oaths. Laws 1851, ch. 371, § 2.

*Penalty for not making report.* Any such agent who shall refuse or neglect, without good and sufficient cause, to furnish such list, shall forfeit the sum of five hundred dollars to the use of each county in which such debtor resides, to be sued for by the treasurer of such county in his name of office, and to be recovered upon proof that the principal of such agent had debts owing to him by inhabitants of such county, of the description mentioned in the first section of this act, and that the existence of such debts was known to such agent. Id. § 3.

*Abstract to be sent to assessors.* The county treasurer, on receiving such statement, shall immediately make out and transmit to the assessors of the several towns of his county in which any such debtor resides, an abstract or copy of so much of such statement as relates to the town of such assessor, with the name of such creditor, Id. § 4.

*Assessors to assess.* The assessors on receiving such abstract or statement from the county treasurer, shall, within the time in which they are now required by law to complete their assessment roll, enter thereon the name of such non-resident debtor, and the aggre-

gate amount due him in such town, on the first day of January preceding, in the same manner other personal property is entered on said roll. Laws 1851, ch. 371, § 5.

The above provisions of the act of 1851 are applicable only to taxation in towns. As to taxation in villages, the general law authorizing taxation to agents (1 R. S. ch. 13, title 1, § 5, as amended in 1851), remains in force. *People v. Trustees of Ogdensburgh*, 48 N. Y. 390. Money due upon a contract for the sale of lands is personal property; and where such a contract, belonging to a non-resident, is in the hands of an agent, who is a resident of an incorporated village, it may, for the purposes of municipal taxation, be assessed to the agent, and taxed. *Id.*

As the assessors are to have their assessment roll completed on or before the 1st day of August, there are but six days within which the treasurer is to forward to the assessors and the assessors to insert in the roll the abstract.

The agent is to furnish a statement of all debts owing for the purchase of any real estate, but the assessors are only to enter those which are due and *taxable*, according to the general provisions of law, that is, "debts due from solvent debtors." *People v. Halsey*, 36 How. 502.

The assessors are not concluded by the verified statement of the agent, but they may, in the exercise of their general powers and duties, go further and make inquiries for themselves, from the debtors and other sources, and thus ascertain and determine to their own satisfaction the amount of such indebtedness, from solvent debtors of the town, due to such non-resident creditors; and whatever mistakes or errors the assessors may make in ascertaining such debts, they cannot be made liable therefor, since they act in a judicial capacity. *Id.* 487; S. C., 37 N. Y. 344; 53 Barb. 547; 4 Trans. App. 261.

The agent may, however, apply in the same manner as other persons for a reduction of the assessment.

It was held, under the act of 1833, chapter 250, which was somewhat similar to the above, that where

a resident purchased of a non-resident land company bonds and mortgages, which the company had taken from persons to whom it had sold lands, and the agreement was that the land company should remain the owner until the consideration was paid, the consideration due was not a debt for the purchase of land. *Redfield v. Supervisors of Genesee*, Clark, 42.

## SECTION VIII.

### ON CORPORATIONS.

All lands and all personal estates within this State, whether owned by individuals or corporations, shall be liable to taxation subject to the exemption hereinafter specified. 1 R. S. 388, § 1.

The exemptions have been heretofore given. Corporations are entitled to the same exemptions as individuals. 23 N. Y. 192.

The statute has included in its definition of "personal estate" the following, "stocks in moneyed corporations;" also such portions of the capital of incorporated companies liable to taxation in their capital as shall not be invested in real estate. 1 R. S. 388.

The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock. *Id.*

*Companies liable to taxation.* All moneyed or stock corporations deriving an income or profit from their

capital or otherwise, shall be liable to taxation on their capital in the manner hereinafter prescribed. 1 R. S. 414.

Such was the provision of the Revised Statutes. It has been somewhat modified, however, by recent legislation.

Chapter 761 of the Laws of 1866, given hereafter, provides that no tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States, but provides for the assessment of stockholders.

The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company, shall be; or if such company have no principal office, or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company, are collected in several towns or wards, the company shall be assessed in the town or ward, in which the treasurer or other officer authorized to pay the last preceding dividend, resides. 1 R. S. 389.

The place named in the certificate of incorporation of a manufacturing corporation organized under the

general act, as the place where the operations of the company are to be carried on, and where the manufactory is situated, determines the location of the corporation in respect to its liability to taxation. It makes no difference that a treasurer's office is kept, and the financial operations of the company are chiefly managed at another place. *Oswego Starch Co. v. Dolloway*, 21 N. Y. 449.

*Officers to deliver statement.* The following is the manner of taxing corporations as referred to above :

The president, cashier, secretary, treasurer or other proper officer of every such incorporated company shall, on or before the first day of July in each year, make and deliver to the assessors, or one of them, of the town or ward in which such company is liable to be taxed, according to the provisions of the sixth section of the second title of this chapter, a written statement, specifying —

1. The real estate, if any, owned by such company, the towns or ward in which the same is situated, and the sums actually paid therefor ;

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real estate, and the amount of such capital stock held by the State, and by any incorporated literary or charitable institution ; and

3. The town or ward in which the principal office or place of transacting the financial business of such company is situated ; or, if there be no such principal office, the town or ward in which its operations are

carried on, or in which it is liable to be taxed, under the provisions of this chapter. 1 R. S. 414, § 2.

The president or other proper officer of every such company, shall also deliver to the comptroller, on or before the first day of July in each year, a written statement, containing the same matters required by the foregoing section, to be specified in the statement to be delivered to the assessors. The statements required by this and the preceding section of this title shall be certified under the oath of the said president or other proper officer, to be in all respects just and true. Id.

*Penalty.* If the statements above required, or either of them, shall not be furnished by any company to the assessors and to the comptroller within thirty days after the time above provided, the company neglecting to furnish such statements, or either of them, shall forfeit to the people of this State, for each statement omitted to be furnished, the sum of two hundred and fifty dollars: and it shall be the duty of the comptroller to furnish the attorney-general with an account of all companies that shall neglect to render such lists, that he may prosecute for the penalties hereby imposed. Id. 415, § 4.

*Suit therefor.* If any company that shall be prosecuted for any such penalty shall pay the costs of prosecution and furnish the statement required, the comptroller, if he shall be satisfied that the omission was not willful, may, in his discretion, discontinue such suit. Id. § 5.

*Companies, how assessed.* The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies, and the property of all other incorporated companies, liable to taxation in their respective towns, in their assessment rolls, in the following manner :

1. They shall insert in the first column of their assessment rolls, the name of each incorporated company in their respective towns or wards, liable to taxation on its capital, or otherwise ; and under its name they shall specify the amount of its capital stock paid in, and secured to be paid in ; the amount paid by such company for real estate, then belonging to such company, wherever the same may be situated, the amount of all surplus profits or reserved funds, exceeding ten per cent of their capital after deducting therefrom the said amount of said real estate, and the amount of its stock, if any, belonging to the State, and to incorporated literary and charitable institutions.

2. In the second column they shall enter the quantity of real estate owned by such company, and situated within their town or ward ; and in the third column, the actual value thereof, estimated as in other cases.

3. In the fourth column they shall enter the amount of the capital stock of every incorporated company paid in, and secured to be paid in, and of all surplus profits or reserved funds as aforesaid ; after deducting the sums paid out for all the real estate of such company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any,

belonging to the people of this State, and to incorporated literary and charitable institutions. Id. § 6, as amended 1853, chap. 654. See Form No. 16.

The effect of the provisions of the statute above cited is, to require the assessors to put the real estate of the corporation into the assessment roll at the price paid for it, and no duty is imposed upon them at all in regard to assessing the real estate except that specified in the second subdivision of the sixth section, which requires them to enter "in the second column the quantity of real estate owned by such company, and situated within their town or ward, and in the third column the actual value thereof estimated as in other cases." There is nothing in the statutes that requires the assessors to carry into the assessment roll the quantity of real estate owned generally by a corporation, or to assess its value. They are to set down in the first column, among other things, the "*amount* paid by such company for real estate then belonging to such company, wherever the same may be situated." In the second column they are to enter the "*quantity* of real estate owned by such company, and *situated within their town or ward*, and in the third column the actual value thereof estimated as in other cases." *People v. Board of Assessors*, 39 N. Y. 81.

The scheme of the statutes is to have placed in the assessment roll the amount of its capital stock paid in and secured to be paid in, the amount paid by such company for real estate then belonging to such company, wherever the same may be situated, the amount of all surplus profits or reserved funds, exceeding ten per cent of their capital, after deducting therefrom

the said amount of said real estate, and the amount of its stock, if any, belonging to the State and to incorporated literary and charitable institutions, and these are to be made the basis of the assessment; and as there is no provision for carrying into the assessment roll any general assessment of real estate wherever situated, it follows that the assessed value of the real estate generally, so far as it is to be taken in the account in ascertaining what assessment shall be made upon its capital, is the price paid for such real estates, and the price paid is to be deducted from its estimated capital. The real estate is to be *assessed* as other real estate of individuals in the town or ward where the same is situated, at its value, whether more or less than the price paid. *People v. Board of Assessors*, 39 N. Y. 84.

*The assessment, how made.* The entries being made in the assessment roll as above provided, the statute provides the following manner of making the assessment :

The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or as shall have been exempted by law, together with its surplus profits or reserved funds, exceeding ten per cent of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value, and taxed in the same

manner as the other personal and real estate of the county. Laws 1857, ch. 456.

The assessed value of the real estate spoken of in this section is construed to mean the amount paid for it.

From the foregoing we may deduce the following rule of taxation : The assessment is to be based upon the amount of capital paid in and secured to be paid in, after deducting the amount actually paid out for real estate and the amount belonging to the State and to incorporated literary and charitable institutions, to assess the remaining capital at its actual value, leaving the real estate, as the law leaves it, to be assessed, like other real estate, upon individuals in the town or ward where situated.

Prior to the year 1857 moneyed corporations were assessed upon the *amount* of the nominal capital, whether its value in fact was more or less than its nominal amount. In that year the statute was amended by the above section, so that the assessment was made upon the capital stock and its surplus profit exceeding ten per cent "at its actual value." The principle of assessing upon the actual value of the stock, instead of its nominal amount, was then introduced. *People v. Dolan*, 36 N. Y. 59 ; *People v. Ferguson*, 38 id. 91.

Under the statute of 1857, above cited, the assessors can no longer take the nominal capital as, under all circumstances, the amount of the assessment. When the nominal value does not represent its actual value, it is their duty to look to its market price and to ascertain the character and worth of the

securities in which its funds have been invested. They are also to inquire whether any of this property into which the capital has been converted is exempt by law from taxation. *Prima facie* its nominal capital may be considered its actual value, but when there is any ground for supposing otherwise, it is their duty to investigate. The market price of its shares would ordinarily furnish a practical test; but the assessors have a right to examine and have an estimate made of the value of the securities. *People v. Commissioners of Taxes*, 23 N. Y. 194.

The foregoing provisions of the Revised Statutes, prescribing what shall be set down in the assessment roll, directs the assessors to set down in the first column the *amount* of the capital stock, etc. The act of 1857, which changed the rule of assessment, so as to make the *actual value* the basis, made no provision for a change in the assessment roll; but as the intent is clear, the assessors should change the form of the roll to comply with that act. See *Oswego Starch Co. v. Dalloway*, 21 N. Y.

In assessing the property of corporations, it is proper for the assessors, after having deducted, from the amount of capital paid in or secured, a specified sum for the value of its real estate, to assess the remaining capital as personal estate, at its actual value, as shown by the evidence before them. *People v. Howland*, 61 Barb. 273.

A portion of the property of a steamship company, incorporated under the laws of New York, was permanently located in the business of the company beyond the limits of this State. *Held*, that such

property was, under the statute, exempt from taxation here. *People v. Commissioners of Taxation*, 1 N. Y. Sup. Ct. Rep. 611. The provision of chapter 456 of the Laws of 1857, that the stock of every company liable to taxation shall be assessed at its actual value, etc., was not intended to include property, real or personal, located without the State. Such property is not subject to taxation, and is not, therefore, within the statute. *Id.*

The property of a corporation resident in this State need not be physically within the State, to be taxable. It is enough that its legal *situs* and ownership are here. Under the Laws of 1857, chapter 456, the actual capital of a resident corporation is taxable, although a portion of it may be invested in property temporarily situated outside the State. *People v. Commissioners of Taxes*, 3 N. Y. Sup. Ct. Rep. 678.

*Application for reduction.* Corporations may make application for a reduction of the assessment in the same manner as individuals. Laws 1857, ch. 536, § 3.

*Assessment on banks and bank stock.* Banks were formerly taxed, like other corporations, on their capital stock paid in or secured, and the following act was passed in 1863 :

All banks, banking associations and other money corporations and associations, shall be liable to taxation on a valuation equal to the amount of their

capital stock paid in or secured to be paid in, and their surplus earnings (less ten per cent of such surplus) in the manner now provided by law, deducting the value of the real estate held by any such corporation or association and taxable as real estate. Laws 1863, ch. 240; 36 N. Y. 66.

But this act was subsequently declared void by the supreme court of the United States, as levying a tax on the property of a bank, which property, in whole or in part, consisted of stocks of the federal government. The legislature thereupon passed the following act providing for the taxation of shareholders:

No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State, or of the United States, but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholder, in the assessment of taxes at the place, town or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder reside in said place, town or ward, or not, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals in this State. And in making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested, in which said shares are held, to the whole amount of the capital stock of said bank

or banking association. And provided, further, that nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by any such bank or banking association, but the same shall be subject to State, county, municipal and other taxation, to the same extent and rate, and in the same manner as other real estate is taxed. Laws 1866, ch. 761.

The reason of changing the mode of assessment from the capital stock to the stockholders, is to be found in the fact that, since almost the entire banking capital of the State was invested in United States securities, this large amount of personal property escaped taxation (the banks not being taxable upon that portion of their capital so invested), and that by assessing and taxing the shares of stock in the hands of the stockholder, the entire amount might be reached and made to bear its proportionate part of the burdens of State taxation.

Under the decision of the Supreme Court of the United States in *Van Allen v. The Assessors* 3 Wall. 573, the assessment of an individual as a shareholder of a national bank, by town assessors, under chap. 97 of the Laws of 1865, is without any valid legal authority, and is therefore void. *Trustees of the Village of Angelica v. Morse*, 56 Barb. 380. But, inasmuch as the statute expressly requires commissioners of highways to assess the residue of the highway labor, after assessing one day against persons subject thereto, upon the real and personal estate of every inhabitant, as the same appeared upon the

last assessment roll, and gives them no discretion to omit any of such property appearing on the roll, the invalidity of the assessment of an individual as a stockholder of a national bank, under the act of 1865, does not render void the assessment of such individual by the trustees of a village, acting as commissioners of highways, for highway taxes in the year 1866, upon the property so assessed against him in the preceding year. *Id.*

Certain Canadian banks did business in New York city, through agencies permanently located there. These agencies held funds of the banks, which were loaned on call, or for specified times, to borrowers. *Held* that these banks were liable to taxation upon the amounts invested in their business in this State, under Laws of 1855, chapter 37, which subjects to taxation non-resident associations doing banking business here, and could not claim exemption under Laws of 1851, chapter 176, section 2, exempting moneys in the hands of agents of non-resident capitalists, sent here for investment. *People v. Commissioners of Taxation*, 1 N. Y. Sup. Ct. Rep. 630.

In proceedings by a bank and the stockholders thereof, to compel a board of supervisors to refund taxes claimed to have been illegally assessed, on the ground that the assessors did not deduct the assessed value of the real estate of the bank from the value of the shares of the stock therein, but valued and assessed both the real estate and the shares at their

full value. *Held* that in the absence of proof to the contrary, the assessors would be presumed to have made the deduction required by law; and that the affidavit of the assessors attached to the roll, stating that said roll contained a true statement of the taxable personal estate "at the full and true value thereof," was not evidence that the deduction was not made. *Matter of Farmers' National Bank of Hudson*, 1 N. Y. Supr. Ct. Rep. 383.

The omission of assessors to deduct the assessed value of the real estate of a bank from the value of its shares of stock, is not "a manifest clerical or other error," to be corrected by the board of supervisors, under chapter 695 of the Laws of 1871. *Matter of Farmers' National Bank of Hudson*, 1 N. Y. Supr. Ct. Rep. 383.

*Oath of individual bankers.* Every individual banker doing banking business under the laws of this State, is hereby required to declare upon oath before the assessor the amount of capital invested in such banking business, and each one hundred dollars of such capital, for the purpose of this act and for the purpose of taxation, shall be held and regarded as one individual share in such banking business, and such shares are hereby declared to be personal property. If such banker have partners, he shall declare upon oath before the assessor the number of shares held by each of them in such banking business, ascertained as

above provided, and the shares so held by any partner shall be included in the valuation of his taxable property in the assessment of all taxes levied in the town, school district or ward, where such individual banker is located, and not elsewhere ; and such individual banker shall pay the same and make the amount so paid a charge in his accounts with such partners ; and if such individual banker have no partners, he shall be held to be sole owner of all the shares in such business of banking, and the same shall be included in the valuation of his personal property in the assessment of all taxes levied in the town, school district or ward, where his bank is located, and not elsewhere. Laws 1866, ch. 761, § 2.

*List of stockholders.* There shall be kept at all times in the office where the business of such bank or banking association, organized under the authority of this State or of the United States, shall be transacted, a full and correct list of the names and residences of all the stockholders therein, and of the number of shares held by each ; and such list shall be subject to the inspection of the officers authorized to assess taxes, during the business hours of each day in which business may be legally transacted. Id. § 3.

*Non-resident stockholders.* Where the owner of stock in any bank or banking association organized under the laws of this State, or the United States, shall not reside in the same place where the bank or banking association is located, the collector and county treasurer shall, respectively, have the same power as

to collecting the tax to be assessed by this act as they have by statute when the person assessed has removed from the town, ward or county in which the assessment was made; and the county treasurer, receiver of taxes, or other officer authorized to receive said tax from the collector, may, all or either of them, have an action to collect the tax from the avails of the sale of his shares of stock and the tax on the share or shares of said stock shall be and remain a lien thereon till the payment of said tax. Laws 1866 ch. 761, § 5.

*Banks to retain dividends.* For the purpose of collecting such tax, and in addition to any other tax law of this State, not in conflict with the Constitution of the United States, relative to the imposition of taxes, it shall be the duty of every bank or banking association, and the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholder as shall be necessary to pay any taxes assessed in pursuance of this act, until it shall be made to appear to such officer that such taxes have been paid. Id. § 6.

*Savings banks.* The privileges and franchises granted by the legislature of this State to savings banks or institutions for savings, are hereby declared to be personal property and liable to taxation as such in the town or ward where they are located, to an amount not exceeding the gross sum of their surplus earned (after deducting the amount of such surplus invested in United States securities), and the officers

of such banks or institutions may be examined on oath by assessors, as to the amount of such surplus and securities; and the property of such banks and institutions shall be liable to seizure and sale for the payment of all taxes assessed upon them for said privileges and franchises. *Id.* § 7, as amended 1867, ch. 861.

*Deduction for debts.* Moneyed corporations are not entitled to have its liabilities deducted. *People v. Board of Education*, 46 Barb. 588.

Nor is a shareholder, who has been assessed upon the value of his shares in a bank or banking association, pursuant to the above statute of 1866, entitled to have a reduction of valuation made by the assessors on account of debts. *People v. Dolan*, 36 N. Y. 59.

All persons and associations doing business in the State of New York, as merchants, bankers, or otherwise, either as principals or partners, whether special or otherwise, and not residents of this State, shall be assessed and taxed on all sums invested in any manner in said business, the same as if they were residents of this State; and said taxes shall be collected from the property of the firms, persons or associations to which they severally belong. Laws 1855, chap. 37.

*Deposits in savings banks, etc.* The deposits in any bank for savings which are due to depositors, and the accumulations in any life insurance company organized under the laws of this State, so far as the said accumulations are held for the exclusive benefit of the assured, shall not be liable to taxation, other than

the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of the State. Laws 1857, chap. 456.

*Insurance companies.* Any mutual life insurance company in this State, incorporated previously to the passage of the general insurance law on the tenth day of April, 1849, shall be subject to taxation in the same manner as if it were incorporated under said general law, with a capital of one hundred thousand dollars, as required by the sixth section of the said general law. Laws 1853, chap. 469.

A foreign corporation, doing business in this State, is to be regarded as non-resident; and it is to be assessed and taxed upon all moneys in any manner invested in this State, in the same manner as though it was a resident corporation; and the securities deposited with the comptroller are personal property liable to taxation. *Smyth v. International Life Ins. Co.*, 35 How. 126; *British Life Ins. Co. v. Commissioner of Taxes*, 1 Keyes, 303.

A foreign life insurance company, doing business in this State, is properly taxable in the city where the principal place of business or office of the company is situated. *Id.*

In assessing insurance companies, it is the duty of the assessors to estimate the contingent liability of an insurance company upon outstanding policies of insurance in force, by the usual rules of determining such liability, and to deduct the estimate so found in

making their assessment of the company for the purposes of taxation. *People v. Ferguson*, 38 N. Y. 89.

*Assessments of railroads.* Railroads are to be taxed on the same principle as other corporations, as heretofore given. The real estate is to be assessed in the town or ward where the same shall be, and the personal estate in the town or ward where the principal business office is situated. The officers of the corporation are required to deliver, on or before the first of July, in each year, to the assessors of any town or ward, where they are liable to taxation, a written statement, specifying the real estate owned in each town and its costs, the capital stock paid, or secured to be paid, and the proportion, if any, held by the State, or any incorporated literary or charitable institution, and the town or ward where their principal business is transacted.

In the town where their principal office is located the assessment is to be made, as prescribed heretofore for corporations in general. In the other towns, where there is nothing but the real estate to assess, it is sufficient to enter the name of the corporation, describe the property and estimate its value.

The real estate of railroad corporations should be assessed at its value for the purpose to which it has been adapted, and not as mere farming lands; and in estimating the same, the assessors are not bound to consider it as mere land and superstructure isolated in their town from the other parts of the road. They are entitled to estimate the value of that part of the real estate within their jurisdiction, which contributes

to make up a complete and useful railroad, extending beyond the town they represent. *People v. Fredericks*, 48 Barb. 173.

A railroad corporation should be regarded as a resident of the various towns and wards through which its road extends, and assessed therein for its real estate the same as taxable inhabitants. The real estate of railroad companies which is occupied and used by them for railroad purposes is not required to be assessed as "non-resident lands." *Id.*; *People v. Barker*, 48 N. Y. 70; *Buffalo & State Line R. R. Co. v. Supervisors of Erie*, *id.* 93.

All real estate owned, possessed or appropriated for use by railroad companies, is subject to assessment and taxation, as their property. *People v. Beardsley*, 52 Barb. 105. Land belonging to the Allegany Indian reservation, which a railroad company has acquired to occupy for the construction, occupancy and maintenance of its road by contract with the chiefs of the nation to which it belongs, not limited as to time, is owned by the company, within the meaning of the statutes relating to taxation. Although the fee of the land cannot legally pass under such contract, yet, to the extent specified therein, such land has ceased to be the property of the Indian nation, and is no longer exempt from taxation as such. *Id.*

A horse-railway company, which has acquired a right of way for its track, in highways and streets,

by grants from owners of the fee, or by proceedings under the general railroad act, and has constructed and is operating such road under a statute giving it a right so to do, for fifty years, has acquired an interest in the land which, with the superstructure annexed thereto, is assessable as real estate. *People v. Cassity*, 2 Lans. 294; S. C., aff'd. 46 N. Y. 46. Railroad corporations are not, in the purview of the tax laws, non-residents of any town in which they possess lands. Such lands are to be assessed against them, the same as against inhabitants of the town, and not as non-resident lands. S. C., 46 N. Y. 46.

In assessing the real estate of a railroad corporation, assessors are not required to assess it as an isolated piece of land, but each piece of property is to be estimated in connection with its position, its incidents, and the business and profits to be derived therefrom. *People v. Barker*, 48 N. Y. 70. The real estate of a railroad corporation, occupied and used by it for railroad purposes, cannot properly be assessed as "non-resident lands." *Id.* The provisions of the Revised Statutes, for the assessment of taxes upon incorporated companies (1 R. S. 414, *et seq.*) furnish a sufficient basis for the assessment and taxation of the lands of railroad corporations, in those towns and counties remote from their principal places of business. *Id.* The assessors in those towns are not required to make the entries upon their roll required for the purpose of fixing a basis of a tax upon the

capital of the corporation. 1 R. S. 415, § 6, subds. 1, 2. Those directions are appropriate to the assessors of the town or ward where the principal place of business is located, upon whom the duty of assessing the capital is devolved. Where the duty is not devolved, the directions are not applicable. *Id.*

A railroad corporation which passes through and occupies lands in several counties, for the carrying on of its corporate business is, for the purposes of taxation, to be regarded as a resident of each town and county through which it passes. Its real estate is, therefore, properly assessed *in personam* as the land of a resident, and not as non-resident land. *Buffalo & State Line R. R. Co. v. Supervisors of Erie*, 48 N. Y. 93.

The rolling stock, owned and used upon its tracks, by a railroad company, is personal property, and as such is liable to be seized and sold for the collection of a tax against the company. *Randall v. Elwell*, 52 N. Y. 521.

The commissioners of taxes, etc., in making an assessment upon the capital stock of a street railroad company, valued such stock at the actual value; deducted therefrom the cost price of the real estate of the company, and returned the balance as the sum in which the company should be assessed, refusing to deduct the amount of the indebtedness of the company from such valuation. *Held*, that the rule

of assessment adopted was correct. That in ascertaining the value of the capital stock, the commissioners could not disregard the indebtedness of the company, which must enter into the estimate; but after the stock was valued, the amount of indebtedness could not be deducted from the valuation. *People v. Commissioners of Taxation*, 1 N. Y. Sup. Ct. Rep. 635.

## SECTION IX.

### MISCELLANEOUS DUTIES.

*To make list of insane persons.* It is the duty of the assessors in each town and ward in the State, every year to make diligent inquiry, and ascertain with accuracy the number and names of all insane persons in the town or ward, and to make a list of the same, with the best account they can procure in each case, as to the age, general health, habits and occupation; kind, degree, and duration of insanity, and pecuniary ability of such insane person, and the pecuniary ability of the relatives liable to his support. Such list, with all the facts brought down to the latest period, must be delivered to the clerk of the county by the first day of August. Laws of 1842, chap. 135.

*Delinquent assessors to be returned to comptroller.* The board of supervisors of the several counties, at every annual meeting, shall transmit to the comp-

troller the names and places of abode of the town clerks and assessors in their respective counties, who shall have willfully refused or neglected to perform the duties required of them in this chapter; and the comptroller shall thereupon give notice to the district-attorneys of the proper counties, to the end that they may prosecute such delinquent town clerks and assessors for the penalties incurred by them. 1 R. S. 420.

*Correcting descriptions.* If, in consequence of having received irregular and imperfect descriptions of the lands of non-residents in any town, the comptroller shall apprehend that irregular or imperfect returns may again be received, he may give notice of such apprehension to the board of supervisors of the proper county, at their annual meeting, specifying the several towns in such county, the returns from which will probably require correction. Id.

It shall be the duty of such board of supervisors to require the assessors and the collector of such town, specified in the notice of the comptroller, to meet in such town, at such place as shall be designated by the supervisors, within thirty days of the expiration of the time, when the collectors are to make their returns to the county treasurers.

It shall be the duty of the assessors and collectors to meet pursuant to such requisition. The collectors shall specify to the assessors, the several lots to be returned as non-resident property, by reason of the non-payment of the taxes; and the assessors shall arrange the same according to the provisions of this chapter, and shall examine the descriptions of the lots;

and in case any of them are found erroneous and imperfect, they shall correct the same, conformable to such instructions as may have been received from the comptroller, and the collector shall thereupon return the lots, as arranged and described by the assessors, to the county treasurer. 1 R. S. 420.

*Duty in respect to enforcing payment of taxes.* In case of the refusal or neglect of any person to pay any tax imposed on him for personal property, if there be no goods or chattels in his possession upon which the same may be levied by distress and sale according to law, and if the property assessed shall exceed the sum of one thousand dollars, the collector of the town or ward, if he has reason to believe that the person taxed has debts, credits, choses in action, or other personal property not taxed elsewhere in this State, and upon which levy cannot be made according to law, shall report the same to the assessors of the town or ward. And any assessor may thereupon, in his discretion, make application within one year to the court of common pleas of the county, or to the supreme court, to enforce the payment of such tax. Laws 1842, ch. 318.

The neglect or refusal to pay such tax according to law, shall be held and deemed to be a neglect or violation of duty or misconduct within the provisions of title thirteen of chapter eight of the third part of the Revised Statutes; and the court, upon application of an assessor as herein provided, and due proof, may proceed to enforce the payment or punish the misconduct in the same manner, and with the like

authority, as is provided in the above mentioned title of the Revised Statutes in regard to offenses therein made punishable, or to the enforcing the payment of money by fine and imprisonment, or either of them.

The court may impose a fine for the misconduct mentioned in the next preceding section, sufficient in amount for the payment of the tax assessed, and of the costs and expenses of the proceedings authorized by this act to enforce such payment, or to punish such misconduct; and the amount of such tax shall be paid out of such fine, to the county treasurer of the county, who shall apply the same in like manner as the tax was required to be applied, if the same had been collected by the collector; and the costs and expenses of such proceedings shall be paid out of such fine to the assessor who made the application to enforce the payment of the tax.

In proceedings under the above act, to compel the payment of a tax, the assessor gave notice of a motion for an attachment, or for such other or further relief as the court might grant. On the hearing, the defendant appeared by counsel, and presented his affidavit controverting the fact of his residence in the town. The court thereupon directed a reference to a referee, to take and report the evidence, the motion meanwhile to stand over. Evidence, on both sides, upon the question of residence, was taken and reported, and, upon the adjourned day, the court adjudged the defendant guilty of misconduct, imposed a fine, and directed his imprisonment until the fine should be paid. *Held* that the motion having been made without objection on the part of the defendant,

as to the form in which he was called upon to appear, it came up at the final hearing as upon an order to show cause why he should not be compelled to pay the tax; that an order to show cause had only the effect of a notice, and after a litigation upon the merits, it was too late to raise the question as to such defect in form; and that therefore it was not error in the court to proceed to determine upon the merits of the application, without first issuing an attachment. *Matter of Nichols*, 54 N. Y. 62. *Held*, also, that in imposing the fine, the adding of five per cent to the amount of the tax, besides the costs and expenses of the proceedings, was not error, inasmuch as, by chapter 455 of the Laws of 1847, it is provided that the town collector, in making return of unpaid taxes, shall add five per cent, which shall be collected with the unpaid taxes. *Id.*

*To assess tax on dogs.* In all the counties of the State, except the city and county of New York, there shall be annually levied and collected the following tax upon dogs: Upon every bitch owned or harbored by any one or more persons, or by any family, three dollars; upon every additional bitch owned or harbored by the same person or persons, or family, five dollars; upon every dog other than a bitch owned or harbored by one or more persons, or by any family, fifty cents; and upon every additional dog other than a bitch owned or harbored by the same person or persons, or families, two dollars. 1 R. S., as amended, Laws 1862, chap. 244, § 1.

The owner or possessor of every dog liable to the above tax, shall, whenever required by any assessor,

deliver him a description in writing of every such dog owned or possessed by him. For every neglect or refusal so to do, and for every false statement made in any description so furnished, he shall forfeit five dollars, to be recovered by the supervisor of the town. 1 R. S. 703, § 3.

The assessors of every town or city, or ward of a city, except the city of New York, shall annex to the assessment roll of real and personal estate therein made by them annually the name of each and every person or persons liable to the tax imposed hereby, together with the number of bitches and dogs for which such person or persons is or are to be assessed, and return the same to the supervisor of their respective towns, cities or wards of cities, to be laid by said supervisor before the board of supervisors, to be by them collected in the same manner as other State and county and town taxes are collected. And if any person duly assessed shall refuse or neglect to pay the tax so assessed within five days of the demand thereof, it shall be lawful for any person and it shall be the duty of the collector to kill the dog so taxed. 1 R. S. 703, as amended 1862, chap. 244, § 2.

Every person in possession of a dog, or who shall suffer any dog to remain about his house for the space of twenty days, previous to the assessment of a tax, shall be deemed the owner of such dog. 1 R. S. 708

*Military roll.* The act of 1854 and the act of 1868, requiring assessors to include in their assessment roll a list of persons liable to do military duty, have been repealed. Laws 1862, ch. 477 ; Laws 1869, ch. 778.

*Annual tax for highways.* The act of May 2, 1873, "to alter the system of repairing the highways," in respect to such towns as may wish to change the existing system of working and repairing the highways, and adopt the privileges of that act, repeals the provisions of the Revised Statutes relative to assessments for, and performance of, labor upon highways, and all laws amending the same. Laws of 1873, ch. 395, § 1. Section 3 of said act, as amended in 1874, provides that it shall be lawful for any town voting in favor of such change to raise, by tax, to be levied and collected the same as any other tax, for the repair of its highways, an annual sum of money, which shall be at least equivalent to the value of the days' work theretofore assessed at the commutation prices. *Id.*; Laws of 1874, ch. 169.

*Assessment of highway labor.* In all cases where there is an incorporated village or city within the limits of any town, which is by law a separate road district, and there shall be any real estate, owned by any person or corporation, situated partly within the limits of such village or city and partly without such village or city, it is the duty of the assessors of such town, after fixing the valuation of the whole of such real estate as now by law required, to determine what proportion of such valuation is on account of that part of said real estate lying without the limits of said city or village, and designate the same upon their assessment list. Laws of 1871, ch. 71, § 1. The valuation of the real estate lying without the limits of any city or village, so fixed and determined by the assessor, shall be the valuation on which the commissioners of highways of towns shall assess highway labor against the owner or owners of such real estate; and in no case shall the commissioners of highways assess any highway labor on property situated within the limits of any incorporated city or village which is by law a separate road district. *Id.*, § 2.

By chapter 373 of the Laws of 1876 it is provided, that the owners of two thirds of the real estate for not less than a mile along any plank or turnpike, upon a compliance with certain conditions therein named, and with the consent of the directors, the company owning such road, and of the supervisor and road commis-

sioner of the town or towns in which such road is situated, may obtain from the county court an order constituting such road a separate road district, exempt from the jurisdiction of such highway commissioners. It is provided that commissioners shall be appointed by the court who shall take charge of the matter of improving such road, and who are authorized to levy a tax therefor. The commissioners are directed to levy the tax on the property benefited in the same manner as other taxes, and, where any of such property fronts on another road, to determine which portion thereof is included within their road district; and if they are unable to agree, or if any party feels aggrieved by their decision, an appeal may be had upon ten days' notice in writing to the assessors of the town, whose decision, when filed with the town clerk, is to be final. The tax is to be in a separate item in the town tax-roll to be collected, and its collection enforced in the same manner as other taxes. The commissioners are to file a map with the town clerk, and a statement of their expenditures.

*Assessments for lock-ups.* The electors of each town in this State shall have power, at their annual town meeting, to direct the erection of one or more houses of detention, or lock-ups, for the detention of persons committed by magistrates thereof, and to direct such sums to be raised, in such town, for the expense of building, or of maintaining, the same, as they may deem necessary. Laws of 1872, ch. 513.

*Levying tax for buying and canceling town bonds, or providing a sinking fund for their payment.* Any town or incorporated village in the State that has issued its bonds, under the provisions of law, which are a valid debt of such town or village, to mature or become due in a specified period of time, may, by a vote of a majority of the electors present, and voting, at any annual town meeting, or charter election, raise by tax levied upon the taxable property of said town or village, such sum as may be specified by said vote for the purpose of buying and canceling said bonds, or the purpose of providing a sinking fund for the ultimate payment of said bonds. Laws of 1874, ch. 410.

## CHAPTER II.

### COLLECTORS.

#### ELECTION AND DUTIES IN COLLECTION OF TAXES.

There shall be chosen at the annual town meeting of each town one collector (1 R. S. 340, as amended 1866, chap. 30), who is to be elected by ballot, and is to hold his office for one year and until another is elected or chosen in his place. 1 R. S. 343, 347. Like other town officers, he must be an elector of the town for which he is chosen.

If a town omits or neglects, at its annual town meeting, to choose a collector, one may be *appointed* by any three justices of the peace of said town, by a warrant under their hands and seals, within five days after such town meeting; and the person so appointed will have the same powers, and be subject to the same duties and penalties, as if he had been duly chosen by the electors. If the justices of the peace fail to appoint, it is the duty of the town clerk, within thirty days thereafter, to call a special town meeting for the purpose of electing a collector. Laws of 1874, ch. 543, § 31, amending 1 R. S. 347, § 56.

*Bond.* Every person, chosen or appointed to the office of collector, before he enters on the duties of his office, and within eight days after he receives notice of the amount of the taxes to be collected by him, shall execute to the supervisor of the town, and lodge with him a bond with one or more sureties, to be approved of by such supervisor, in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector. 1 R. S. 346. See Form No. 19.

The supervisor shall, within six days thereafter, file such bond, with his approbation indorsed thereon, in the office of the county clerk, who shall make an

entry thereof in a book to be provided for the purpose, in the same manner in which judgments are entered of record; and every such bond shall be a lien on all the real estate held jointly or severally by the collector or his sureties within the county, at the time of filing thereof; and shall continue to be such lien till its conditions, together with all costs and charges which may accrue by the prosecution thereof shall be fully satisfied. 1 R. S. 346.

*Refusal to serve.* If any person chosen or appointed to the office of collector shall not give such security as is above required within the time limited for that purpose, such neglect shall be deemed a refusal to serve.

*Vacancy in office, how filled.* If any person chosen or appointed to the office of collector of any town or ward in this State, shall refuse to serve, or shall die, resign, or remove out of the town or ward, before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same, by reason of sickness or any other cause, the supervisor, and any two justices of such town or ward, shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject to the like duties and penalties, and have the same powers and compensation, as the collector in whose place he was appointed; and the supervisor shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector, or his sure-

ties, from any liability incurred by him or them. 1 R. S. 399 ; see Form No. 20.

If a warrant shall have been issued by the board of supervisors prior to any appointment under the last section, the original warrant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to himself ; but if such warrant cannot be obtained, a new one shall be made out by the clerk of the board of supervisors of the county which shall be directed to the collector so appointed. And upon every such appointment, the supervisor of the town or ward, if he shall think it necessary, may extend the time limited for the collection of the taxes for a period not exceeding thirty days ; of which extension he shall forthwith give notice to the county treasurer. 1 R. S. 399.

*Where he neglects to qualify.* In case the collector of any town in this State shall neglect or refuse to execute his bond as required by law, or the supervisor of the town shall refuse or neglect to appear and file such bond within the time prescribed by law, and if no new collector shall have been appointed within ten days after the time for filing such bond as required by law has expired, the board of supervisors of such county are authorized and empowered to deliver the corrected assessment roll, or a copy thereof, with a warrant of said board of supervisors or a majority of them, annexed, to the sheriff of the county, who shall proceed in the collection of said taxes in like manner as collectors are now authorized by law

to do, and with the like powers and subject to the same duties and obligations; such warrant shall require all payments therein specified to be made by such sheriff within sixty days after its receipt by him; and the expenses of collection, if any, over and above the fees lawfully chargeable by the collector, to be audited by the board of supervisors, shall be a charge on the town. Laws 1857, ch. 585.

*Supervisors to deliver assessment roll.* The supervisors having completed their duties upon the assessment roll, shall cause the corrected assessment roll of each town or ward in their respective counties, or a fair copy thereof, to be delivered to the collector of such town or ward on or before the fifteenth day of December in each year. 1 R. S. 396, § 36.

*Warrant to be annexed, its contents.* To each assessment roll, so delivered to a collector, a warrant, under the hands and seals of the board of supervisors, or a majority of them, shall be annexed, commanding such collector to collect, from the several persons named in the assessment roll, the several sums mentioned in the last column of such roll, opposite to their respective names.

If the warrant be directed to the collector of a town, it shall direct the collector, out of the moneys so to be collected, after deducting the compensation to which he may be legally entitled, to pay,

1. To the commissioners of common schools of his town such sum as shall have been raised for the support of common schools therein.

2. To the commissioners of highways of the town, such sum as shall have been raised for the support of highways and bridges therein.

3. To the overseers of the poor of the town, if there be no county poor-house, or other place provided in the county for the reception of the poor, such sum as shall have been raised for the support of the poor in such town.

4. To the supervisor of the town, all other moneys which shall have been raised therein, to defray any other town expenses; and,

5. To the treasurer of the county, the residue of the moneys so to be collected.

If the warrant be directed to the collector of a ward, it shall direct the collector to pay all the moneys to be collected, after deducting his compensation, to the treasurer of the county.

In all cases, the warrant shall authorize the collector, in case any person named in the assessment roll shall refuse or neglect to pay his tax, to levy the same by distress and sale of the goods and chattles of such person; and it shall require all payments therein specified, to be made by such collector, on or before the first day of February then next ensuing. 1 R. S. 396, § 37. See Form 21.

A warrant issued by the supervisors of a county for the collection of taxes is valid, although the persons signing it are not described therein as supervisors, but the proper way is to add the official designation. *Sheldon v. Van Buskirk*, 2 N. Y. 473.

The action of a board of supervisors, in issuing a warrant for the collection of taxes, is not the act of

the several members, as supervisors of the town respectively, but the corporate act of the county. *Newman v. Supervisors of Livingston*, 45 N. Y. 676.

. An assessment roll must be completed before the warrant is annexed thereto. Accordingly, where a board of supervisors determined to increase the valuation of the real estate in a town, by adding a certain per cent thereto, but attached their warrant to the assessment roll before it was completed, by inserting the increased valuation and extending the tax, and delivered it, thus incomplete, to the supervisor of the town, who, after the assessment of the board, filled up the blank columns in the roll and delivered it, with the warrant, to the collector, with directions to collect the tax; it was held that the adjournment roll and warrant were void, and the supervisor was liable in trespass for property seized thereunder; and this although the roll was completed in accordance with the determination of the board. *Bellinger v. Gray*, 51 N. Y. 610.

It has been seen, already, that the statute requires the warrant to be *sealed*. Upon a tax warrant issued by the board of supervisors of Herkimer county, an impression was made with a die, upon which was engraved the words "Seal, Herkimer County Board of Supervisors." No other seal was attached. *Held* that the warrant was imperfectly sealed. *Bellinger v. Gray*, *supra*.

The fees of the collector are not to be added to the

tax list and warrant, but are to be collected as prescribed hereafter. Laws 1845, chap. 180, § 31.

*Account to be transmitted to county treasurer.* As soon as the board of supervisors shall have sent or delivered the rolls, with such warrants annexed, to the collectors, they shall transmit to the treasurer of the county an account thereof, stating the names of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be collected, and the person to whom, and the time when the same are to be paid; and the county treasurers, on receiving such account, shall charge to each collector the sums to be collected by him. 1 R. S. 397, § 38.

*When warrant protects officer.* It is well settled, that the warrant and assessment roll to which it is annexed, constitute one process, and a fatal defect appearing upon the face of either, renders both void and the collector a trespasser; but it is equally well settled that, if the process be regular on its face, or ‘in due form,” it fully protects the officer executing it, whether the tax was legally assessed or not. *Chegary v. Jenkins*, 1 Seld. 376; *Van Rensselaer v. Witbeck*, 3 id. 517; *Patchin v. Ritter*, 27 Barb. 34; *Johnson v. Learn*, 30 id. 616; *Doolittle v. Doolittle*, 31 id. 312.

The authority given to a tax collector, by his warrant, is special and exceptional, and must be pursued according to its terms. *First National Bank of Salem v. Flancher*, 48 N. Y. 524. An affidavit of the assessors to the roll, made prior to the third Tuesday

of August, is a nullity; and where the defect appears upon the face of the paper, by the date of the jurat, it confers no jurisdiction upon the board of supervisors to impose a tax upon persons or property named therein, or to sign a warrant to the collector; and the want of jurisdiction being disclosed by the papers, the warrant furnishes no protection to the collector. *Westfall v. Preston*, 49 N. Y. 349.

The plaintiff placed the amount of a tax against him, in a package, upon his counter, before the collector, but forbade his taking it, claiming that the warrant was defective, and notified him that he would be held responsible therefor. The collector took the package. *Held* that this was not a voluntary payment, and the plaintiff was not estopped from disputing the legality of the warrant. *Bellinger v. Gray*, 51 N. Y. 610. An assessment against an individual for "circulation notes and profits," is illegal; and such an assessment appearing upon the roll, the warrant is void on its face. *Id.*

*When to collect.* The collector should not attempt to collect a tax after the expiration of the time limited in the warrant for its return. His jurisdiction is expired so far as collection is concerned. See *Stroud v. Butler*, 18 Barb. 327. It is, however, the custom of the legislature to extend each year the time for making the return, and to provide for a renewal of the warrant. In such case the collector's jurisdiction would continue during the time limited in the extension. However, if the collector has made a levy on goods before the expiration of his time, he may sell

them at any time within a week after such expiration. *Sheldon v. Van Buskirk*, 2 N. Y. 473.

*Restraining collection.* A bill in equity, to restrain the collection of a tax or assessment, cannot be sustained, if such tax or assessment be void upon its face, or if the proof necessary to enforce it will show its invalidity. *Tilden v. Mayor, &c., of New York*, 56 Barb. 340.

*Manner of collecting.* Whenever any town collector shall have received any warrant for the collection of taxes, he shall immediately thereafter cause notices of the reception thereof to be posted up in five public places in the ward or town, and so located as will be most likely to give notice to the inhabitants thereof, and shall designate in such notices one or more convenient places in such town where he will attend from nine o'clock, forenoon, till four o'clock, afternoon, at least three days in each week for thirty days, on days also to be specified in such notice, for the purpose of receiving payment of taxes; and it shall be the duty of such collector to attend accordingly, and any person may pay his taxes to such collector at the time and place so designated, or at any other time or place, on paying one per cent fees thereon, within thirty days from the first posting of said notices; and no collector shall receive over one per cent fees for receiving or collecting any taxes within said thirty days. But every such collector shall be entitled to receive one cent fees on every amount of tax under one dollar, paid in or collected within said thirty days, except in cases where it is now otherwise provided by law. Laws 1845, ch. 180, § 29, as amended by Laws 1876, ch. 96. See Form of Notice, No. 22.

However, when the aggregate amount to be collected by warrant, when put into the collector's hands, shall not exceed \$2,000, he shall be entitled to receive two per cent on all voluntary payments made to him within the thirty days. Laws 1847, ch. 48.

During the thirty days mentioned in the above section, the collector acts merely as the *receiver* of such taxes as shall be voluntarily paid to him. If he assume to enforce payment during that time, he becomes a trespasser. *Parker v. Brown*, 17 Barb. 145.

It shall be the duty of the collector, after the expiration of the said thirty days, to proceed and collect the unpaid taxes in the same manner, and shall pay over or account to the county treasurer, and shall be entitled to charge, collect and receive the same fees as now provided by law; which said fees shall be collected with such unpaid taxes from the several and respective persons named in said tax list. Id. § 30.

Town collectors shall be entitled to collect five per cent fees for all unpaid taxes, under the above section; and whenever any such collector shall make return to the county treasurer for any unpaid taxes, he shall add to the several sums so returned by him five per cent, which shall go to the credit of the county, and be collected with said unpaid taxes; and such collector shall be entitled to receive from the county treasury and be paid by the treasurer two per cent as fees for all taxes so returned by him. Laws 1847, ch. 455.

The collector is to proceed as follows: He shall call, at least once, on the person taxed, or at the place of his usual residence, if in the town or ward for

which such collector has been chosen, and shall demand payment of the taxes charged to him on his property. 1 R. S. 397.

*Payment, how compelled.* In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found, within the district of the collector; and no claim of property to be made thereto by any other person, shall be available to prevent a sale. 1 R. S. 397.

Where there is a remedy given against both real and personal property for the satisfaction of taxes and assessments, as a general rule the remedy against the personal estate should be first exhausted, unless there is some specific and controlling equity to make it proper to proceed against the real estate in the first instance. *Gouverneur v. Mayor, etc., of New York*, 2 Paige, 434.

The collector may seize not only the goods and chattels of the person taxed, but any goods and chattels in his possession. But the goods seized must be actually in the possession of the person taxed, or the collector will be a trespasser. The possession of the goods by a firm of which the person taxed is a member, will not bring the case within the statute. *Stockwell v. Villih*, 15 Abb. Pr. 412.

Where the goods seized are actually in the possession of the party taxed, they cannot be replevied even though owned by a third person. 2 R. S. 522.

But the case must clearly fall within the statute. The property seized must be either the property of the person assessed, or the goods must be actually in his possession when taken. Where goods are seized and taken from the possession of the owner's servant for a tax against another person, the collector is a trespasser, and the owner may maintain replevin. So where the levy was made upon goods which the person assessed held for sale on commission, and which he had deposited with a warehouseman for storage, when they were seized, the collector was held to be a trespasser and that replevin would lie. *Thomp. Pro. Rem.* 153.

An assessment roll and tax warrant, although valid and regular, will furnish no justification to a tax collector for taking from a drawer of a bank, without the consent of the officers, sufficient funds to satisfy the taxes assessed against stockholders of the bank, some of whom had refused to pay, and some had directed him to call at the bank and receive them. The fact that the bank has, in compliance with the provisions of section 11, chapter 97 of the Laws of 1865, retained enough from the dividends of the stockholders to pay such taxes does not authorize the bank to pay them; nor will it justify the collector in seizing the common funds of the bank to satisfy them. *First National Bank of Sandy Hill v. Fancher*, 52 Barb. 138; S. C., *aff'd* 48 N. Y. 524.

The interest of a tenant in common of personal property can be levied upon under a warrant for the collection of taxes, but only the interest of the person owing the tax can be sold. If the collector sell the entire property, he will be a trespasser. Thus, where a tenant had taken a farm to work "on shares," the entire crop raised thereon may be seized upon for a tax against him, but only his interest therein can be sold. *Dinehart v. Wilson*, 15 Barb. 595.

*Tax on part of lot.* The collector shall receive the tax on a part of any lot, piece or parcel of land, charged with taxes, provided the person paying such tax shall furnish a particular specification of such part; and if the tax on the remainder of such lot, piece or parcel of land, shall remain unpaid, the collector shall enter such specification, in his return to the county treasurer, to the end that the part on which the tax remains unpaid, may be clearly known. 1 R. S. 399.

If the part on which the tax shall be so paid, be an undivided share, then the person paying the same shall state to the collector who is the owner of such share, that it may be excepted in case of a sale for the tax on the remainder. And the collector shall enter the name of such owner on his account of arrears of taxes. 1 R. S. 399.

*In case of refusal or neglect.* In case of the refusal or neglect of any person to pay any tax imposed on him for personal property, if there be no goods or chattels in his possession upon which the same may be levied by distress and sale according to law, and if the property assessed shall exceed the sum of one thousand dollars, the collector of the town or ward, if he has reason to believe that the person taxed has debts, credits, choses in action, or other personal property not taxed elsewhere in this State, and upon which levy cannot be made according to law, shall report the same to the assessors of the town or ward. And any assessor may thereupon, in his discretion, make application within one year to the court of common pleas of the county, or to the supreme court, to enforce the payment of such tax. Laws 1842, chap. 318.

The neglect or refusal to pay such tax according to law, shall be held and deemed to be a neglect or violation of duty or misconduct within the provisions of title thirteen of chapter eight of the third part of the Revised Statutes; and the court upon application of an assessor as herein provided, and due proof, may proceed to enforce the payment or punish the misconduct in the same manner, and with the like authority

as is provided in the above mentioned title of the Revised Statutes in regard to offenses therein made punishable, or to the enforcing the payment of money by fine and imprisonment, or either of them. Laws 1842, ch. 318, § 2.

The court may impose a fine for the misconduct mentioned in the next preceding section, sufficient in amount, for the payment of the tax assessed, and of the costs and expenses of the proceedings authorized by this act to enforce such payment, or to punish such misconduct; and the amount of such tax shall be paid out of such fine, to the county treasurer of the county, who shall apply the same in like manner as the tax was required to be applied, if the same had been collected by the collector; and the costs and expenses of such proceedings shall be paid out of such fine to the assessor, who made the application to enforce the payment of the tax. *Id.*

A person assessed or taxed by reason of his personal property, may be committed as for a contempt, on account of his neglect to pay the tax. *Matter of Kohn*, 19 How.

Whenever any bond taken under the provisions of this act for the appearance of the defendant shall become forfeited, and shall be ordered to be prosecuted, such order shall operate as an assignment of the bond to the county treasurer of the county, who shall be authorized to prosecute the same in any court of record in his name as county treasurer of such county, as the assignee of the officer to whom the bond was given, in the same manner as in other actions on bonds, with conditions to perform covenants other than for the

payment of money; and the measure of damages in such action shall be the extent of such tax and the costs and expenses of the proceedings to enforce the payment thereof, and shall be applied and paid in like manner as the fine mentioned in the next preceding section is therein directed to be applied and paid; and in all such actions, if the plaintiff recovers he shall recover all costs against the defendant. Laws 1842, ch. 318, § 4.

*Sale and notice.* The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up, in at least three public places, in the town where such sale shall be made. The sale shall be by public auction. 1 R. S. 398. See Form No. 23.

*Surplus, how disposed of.* If the property distrained shall be sold for more than the amount of the tax, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus moneys shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties shall be determined by due course of law. 1 R. S. 398.

*How collected in case of removal.* In case any person upon whom any tax now is, or hereafter shall be assessed, in any ward of any of the cities, or in any town within this State, shall have removed out of such ward or town, after such assessment, and before such tax ought by law to have been collected; or if any person shall neglect or refuse to pay any tax which now is, or hereafter shall be assessed in any ward of either of the said cities, or in any town, upon any estate of such person, situated out of the ward or town in which he shall reside, and within the county; it shall be lawful, in either of those cases, for the collector of such ward or town, to levy and collect such tax of the goods and chattels of the person assessed, in any ward within the said cities, or in any town within the said county, to which such person shall have so removed, or in which he shall reside. 1 R. S. 398.

Whenever it shall satisfactorily appear to the treasurer of any county in the State, that any State or county tax legally assessed within his county (not assessments on real estate of non-residents), cannot be collected by reason of the removal of the person so assessed to any other county of this State, it shall be lawful for the said treasurer to issue a warrant under his hand and seal, and certified by the clerk of the county, that he is such treasurer, to any constable or sheriff of the county where such person resides, to collect the same out of the personal property of such person. Laws 1833, ch. 461.

It shall be lawful for such treasurer to issue subpoenas for witnesses, and take testimony in relation

to such assessment and removal, and to administer oaths to such witnesses. Laws 1833, ch. 461.

Any sheriff or constable receiving such warrant, shall execute the same, and make the like returns, and be entitled to the same fees, and subject to the same liabilities and penalties for neglect, as upon executions from any court. *Id.*

*Tax on rents, how collected.* It is the duty of assessors, as we have before stated (*ante*, p. 80), to assess taxes upon rents reserved in any lease in fee, or for a term exceeding twenty-one years. The statute provides, that, if such rent shall not be paid, the collector shall levy the same by distress and sale of the goods and chattels of the person against whom the same was assessed within the town or ward of such collector, in the same manner as if such person was an inhabitant of such town or ward. Laws 1846, ch. 327. Should the collector not be able to collect such tax, he should return the same to the county treasurer, as in other cases.

*Tax on corporations, how collected.—Payment of taxes by railroads.* It shall be the duty of the clerk of the board of supervisors of the several counties of this State (except New York and Kings counties, within five days after the making out or issuing of the annual tax warrants by the board of supervisors of their respective counties, to prepare and deliver to the county treasurer a statement showing the title of all railroad corporations in such county, as appears

on the last assessment roll of the towns or cities in such county, the valuation of the property, real and personal, of such corporation in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in their county.

Any railroad company heretofore organized under the laws of this State, or that may be hereafter organized, may, within thirty days after the receipt of such statement by the county treasurer, pay the amount of tax so assessed or levied on their property, with one per cent fees on said tax, to the county treasurer, who is hereby authorized and directed to receive such amounts and to give proper receipt therefor.

In case any railroad company shall fail to pay such tax within said thirty days, it shall be the duty of the county treasurer to notify the collector of all towns or cities in their county, in which said company is assessed, of such failure to pay said tax, and upon receipt of such notice, it shall be the duty of such collector to collect said tax in the manner now provided by law, together with five per cent fees; but no town or city collector shall collect any tax levied or assessed upon the property of any railroad company in said counties by the supervisors of the county until the receipt of such notice from the county treasurer.

The several amounts of tax so received by the county treasurer, of and from railroad companies,

shall be placed to the credit of the town or city for or on 'account of which the same was levied or assessed, and to the credit of the fund or funds to which the same is now or shall be hereafter pledged or appropriated by law, and the one per cent fees also paid shall be placed to the credit of the collector of said city or town; and in case such amounts shall exceed the sum due from said town or city, the surplus shall, on demand, be paid to the supervisor of said town or city, who shall receive, hold and disburse the same as if received from the collector of said town or city.

Nothing in this act shall be construed to prevent any railroad company from paying their tax to the collector of towns or cities as now provided by law; nor shall the provisions of this act be construed to repeal or in any manner interfere with the provisions of chapter nine hundred and seven of the session laws of eighteen hundred and sixty-nine. Laws 1870, ch. 506.

The statute provides the following rule for the collection of taxes from corporations:

The collector shall demand payment of all taxes assessed on incorporated companies, from the president, or other proper officer, of such companies, and if not paid, shall proceed in the collection and payment thereof, in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of moneys collected by him. And the col-

lector's receipt shall be evidence of the payment of such tax. 1 R. S. 418.

If the collector shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the county treasurer, and at the same time, make affidavit before the county treasurer, or some other officer authorized to administer oaths, that he had demanded payment thereof from the president or other proper officer of the company, and that such officer had refused to pay the same, or that he had not been able to make such demand, as the case may be; and that such company had no personal property from which he could levy such tax. Id. See Affidavit of Demand on Corporations, Form 25.

*Non-resident stockholders.* Where the owner of stock in any bank or banking association organized under the laws of this State, or the United States, shall not reside in the same place where the bank or banking association is located, the collector and county treasurer shall, respectively, have the same power as to collecting the tax to be assessed by this act as they have by statute when the person assessed has removed from the town, ward or county in which the assessment was made; and the county treasurer, receiver of taxes or other officer authorized to receive said tax from the collector may, all or either of them, have an action to collect the tax from the avails of the sale of his shares of stock, and the tax on the share or shares of said stock shall be and remain a lien thereon till the payment of said tax. Laws 1866, ch. 761, § 5.

*Collector to pay over.* Every collector shall, within one week after the time mentioned in his warrant, for paying the moneys directed to be paid to the town officers of his town and to the county treasurer, pay to such town officers and county treasurer, the sums required in such warrant to be paid to them respectively, first retaining the compensation to which he may be legally entitled. The town officers to whom any such moneys shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the collector with the county treasurer, and shall entitle him to a credit, in the books of the county treasurer, for the amount therein stated to have been received; and no other evidence of such payment shall be received by the county treasurer. 1 R. S. 398.

All taxes, except school and road taxes, collected for the next thirty years, or so much thereof as may be necessary, in any town, village or city, on the assessed valuation of any railroad in said town, village or city for which said town, village or city has issued or shall issue bonds to aid in the construction of said railroad, shall be paid over to the treasurer of the county in which said town, village or city lies. And it is the duty of such treasurer to purchase the bonds so issued by the town, etc., therewith, and cancel the same. Laws of 1871, ch. 283.

The duty of a town collector to pay to the several officers named in his warrant the sums required to be paid to them respectively within one week after the first day of February, is the duty which the collector and his sureties, by their bond, undertake shall be performed; and on the failure of the collector to execute that duty, the condition of the bond is broken, and the liability of the obligors at once attaches. *Looney v. Hughes*, 30 Barb. 605.

It is no defense in an action against the collector and his sureties on his bond, for not paying over the money, that the same has been stolen from his dwelling-house without any fault or want of care on his part. The statute imposes an imperative liability on the collector for the omission to collect and pay over the taxes, and he is responsible whether the omission is

the result of misfeasance, unavoidable accident or a felony committed by another. *Muzzy v. Shattuck*, 1 Denio, 233.

A town collector, on receiving a tax warrant, is *prima facie* chargeable with the amount of money therein directed to be collected by him; and it is incumbent upon him to discharge himself in some one of the modes pointed out by the statute or recognized by law. On an action upon his bond, for failing to pay over, the burden of proof is on the collector, to show that the failure arose from his inability to collect the sum deficient, except by compulsory measures. *Fake v. Whipple*, 39 Barb. 339; S. C. 39 N. Y. 394.

The collector is bound to make payment to the county treasurer of the moneys not otherwise to be distributed, according to the warrant, and the fact that the county treasurer has paid to the State the amount due to it from the town, is no defense. *Junsen v. Ostrander*, 1 Cow. 670.

A collector must follow fully the direction of the warrant in distributing the tax moneys. He cannot pay with them audited claims against the county. *Matter of Boyce*, 2 Cow. 444.

*When collector is stayed by injunction.* In all cases where proceedings for the collection of taxes are, by injunction or order of a court of record, stayed or suspended beyond the time allowed by law for the collector's return, the collector shall make his return, at the time appointed by law, of such portion of such taxes as have been collected by him, if any, and set forth the facts of such stay or suspension, and the

collector or other officer having a warrant or process for the collection thereof may, after such stay or suspension of proceedings is terminated or removed, and notwithstanding the period for the collection thereof under said warrant or process may expire, proceed in the same manner and with the same effect to collect the same as if his warrant or process was still in force, and the same shall be deemed in full force and effect for such purposes. Laws 1853, ch. 69.

*Over tax.* Whenever any greater amount of taxes shall be assessed in any town than the town charges thereof and its proportion of the State tax and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and the same shall go to the reduction of the tax of the succeeding year. 1 R. S. 390.

*Duty as to unpaid taxes.* If any of the taxes mentioned in the tax list annexed to his warrant shall remain unpaid, and the collector shall not be able to collect the same, he shall deliver to the county treasurer an account of the taxes so remaining due; and upon making oath before the county treasurer, or in case of his absence, before any justice of the peace, that the sums mentioned in such account remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to, or in the possession of, the persons charged with, or liable to pay, such sums, whereon he could levy the same, he shall be credited by the county treasurer with the amount thereof. 1 R. S. 399. On making

the above return, the collector is to copy all the unpaid items in that part of his list appropriated to non-resident taxes, in a separate statement from the items charged against residents. See Form of Oath, No. 24.

The collector is required to deposit the original assessment roll with the county treasurer at the time of making his return. Laws 1855, ch. 427, § 4.

*Affidavit in return of non-resident property.* Whenever the taxes upon non-resident lands shall be returned for non-payment, the collector shall annex to such return an affidavit, stating the reasons why such tax was not collected. Id. § 6.

*When collector refuses to pay over.* If any collector shall refuse or neglect to pay to the several town officers of his town, or to the county treasurer, the sums required by his warrant to be paid to them respectively or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payment ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and return such warrant within forty days after the date thereof; which warrant the county treasurer shall immediately deliver to the sheriff of the county; but no such warrant shall be issued by the county treas-

urer for the collection of moneys payable to town officers, without proof, by the oath of such town officers, of the refusal or neglect of the collector to pay the same, on account therefor as above provided. 1 R. S. 400.

The above provision, requiring the county treasurer to issue his warrant against a delinquent town collector in twenty days, is directory merely; and the issue of such warrant after that time is valid.

The sureties to his bond cannot defend by showing that if the warrant had been served within the twenty days the amount due might have been collected of the collector. *Looney v. Hughes*, 25 N. Y. 605.

In all cases where any county treasurer shall issue his warrant against a defaulting collector, the said warrant shall direct the sheriff to collect of the said collector, in addition to the amount in which the said collector shall be in default, all costs and fees for collecting.

The said sheriff shall receive the same fees as on executions issued out of the supreme court. Laws 1862, chap. 194.

The sheriff to whom such warrant is directed shall immediately cause the same to be executed, and shall make return thereof to the county treasurer, within the time therein specified, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. Such part of the moneys collected, if any, as ought to have been paid by the collector to town officers, shall be paid by the county treasurer to the officers to whom the collector

was directed to pay the same; but if the whole amount of moneys due from the collector, shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid to him, before making any payment to the town officers. 1 R. S. 400.

If the whole sum due from the collector shall be collected, the sheriff shall so state in his return; but if a part only, or if no part of such sum shall be collected, the sheriff shall state in his return the amount levied, if any, exclusive of his fees, and shall also certify that such collector has no goods or chattels, lands or tenements, in his county, from which the moneys or the residue thereof, as the case may be, could be levied; and in either case the county treasurer shall forthwith give notice, to the supervisor of the town or ward, of the amount due from such collector. Id.

The supervisor shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit; and the moneys recovered shall be applied and paid by the supervisor, in the same manner in which it was the duty of the collector to have applied and paid the same. 1 R. S. 401.

If any sheriff shall neglect to return any such warrant, or to pay the money levied thereon, within the time limited for the return of such warrant; or shall make any other return than such as is above mentioned, the county treasurer shall forthwith proceed to collect, by attachment, the whole sum directed to be levied by such warrant. Id.

In case the county treasurer shall fail to collect

such moneys by attachment, he shall certify to the comptroller, that he has issued such warrant, stating its contents, that the sheriff has neglected to return the same, in the manner required by law, or to pay the money levied thereon, as the case may be, and that he has pursued the remedy, by attachment, without effect. 1 R. S. 401.

The comptroller shall give notice thereof to the attorney-general, who shall immediately prosecute such sheriff, and his sureties, for the sum due on such warrant; which sum, when collected, shall be paid to the treasurer of this State, and by him, on the comptroller's warrant, to the county treasurer. *Id.*

In an action by a supervisor, against a tax collector and his sureties, on a bond given in pursuance of a statute extending the time for the collection of taxes, to recover the balance of the amount named in the warrant, which the collector had neither paid over nor relieved himself from liability for in the manner provided by law, the defense was, that the assessment roll and warrant were not delivered to the collector at the time required by law; that the warrant did not contain any return day; that the warrant was only partially filled out, when executed by the board of supervisors; and that the collector had paid over all moneys collected. *Held*, that these facts did not constitute a defense. *Bradley v. Ward*, 1 N. Y. Sup. Ct. Rep. 413.

*Satisfaction of bond.* Upon the settlement of the amount of taxes, directed to be collected by any collector, in any of the towns or wards in this State (the city of New York excepted), the county treasurer shall, if requested, give to such collector, or to any of his sureties, a satisfaction piece in writing, and shall acknowledge the same, before some person authorized to take acknowledgments of the satisfaction of judgments in courts of record. 1 R. S. 401.

Upon the production of such satisfaction piece, acknowledged as aforesaid, the clerk of the county shall enter satisfaction of record of the collector's bond, which shall thereby be discharged. *Id.*

The officers taking and entering such acknowledgment of satisfaction, shall be entitled to the same fees as for taking and entering acknowledgment of satisfaction of a judgment in the courts of common pleas. *Id.*

*Losses on account of collection, how charged.* All losses which may be sustained and any deficiencies which may exist, by reason of the default of the collector of any town or ward, shall be chargeable on such town or ward. Laws 1866, chap. 528.

*Penalty for neglect of duty.* If any collector shall wilfully neglect or refuse to perform the duties assigned him, he shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, in the discretion of the court. 1 R. S. 421.

*Duty as to correction of returns.* If, in consequence of having received irregular and imperfect descriptions of the lands of non-residents in any town, the comptroller shall apprehend that irregular or imperfect returns may again be received, he may give notice of such apprehension to the board of supervisors of the proper county, at their annual meeting, specifying the several towns in such county, the returns from which will probably require correction. 1 R. S. 420.

It shall be the duty of such board of supervisors to require the assessors and the collector of such town, specified in the notice of the comptroller, to meet in such town at such place as shall be designated by the supervisors, within thirty days of the expiration of the time, when the collectors are to make their returns to the county treasurers.

It shall be the duty of the assessors and collectors to meet pursuant to such requisition. The collectors shall specify to the assessors, the several lots to be

returned as non-resident property, by reason of the non-payment of the taxes; and the assessors shall arrange the same according to the provisions of this chapter, and shall examine the descriptions of the lots; and in case any of them are found erroneous and imperfect, they shall correct the same, conformable to such instructions as may have been received from the comptroller, and the collector shall thereupon return the lots, as arranged and described by the assessors, to the county treasurer. 1 R. S. 420.

*Taxes on dogs, how collected.* As has been before stated (ante, p. 103) the assessors are to annex to the assessment roll the names of every person or persons liable to tax on dogs, and the number of dogs and bitches for which such person or persons is assessed. The statute further provides: The collector to whom such list shall be delivered shall proceed and collect the sums of money therein specified, within the time now required by law for the collection of taxes laid by the supervisors, in the same manner and with the like authority, in all respects, as in the collection of taxes imposed by the supervisors of the county, and shall pay the same to the county treasurer, after deducting the commissions allowed by law; and the same remedies to compel such collection and the payment over of the moneys collected may be had against such collectors and their sureties, as in the case of taxes levied by supervisors. 1 R. S. 703.

If any person so assessed shall refuse or neglect to pay the tax so assessed, within five days of the demand thereof, it is the duty of the collector to kill the dog

so taxed. 1 R. S. 703, amended, Laws 1862, chap. 14, § 2.

Every collector shall be allowed to retain a commission of ten dollars on every hundred dollars collected, and at that rate upon all sums collected by him pursuant to the directions of the supervisors; and said collector shall also, on filing his affidavit of the fact with the county treasurer, be entitled to retain as a further compensation from moneys collected by him, the sum of one dollar for every dog or bitch killed by him, under the provisions of the second section of this act above given. 1 R. S. 704, § 4, as amended 1862, chap. 244.

In those counties where the supervisors have adopted the act of 1864, chap. 197, relative to dogs, as provided in such act, the collectors are to pay the tax collected on dogs to the supervisor of the town.

*Receivers of taxes and assessments.* In several of the towns and villages of the State, *receivers* of taxes and assessments are, by special statutes, authorized to be elected at the annual town meetings, instead of collectors, and in those towns and villages the offices of collector and treasurer are abolished, and the powers and duties of those officers conferred upon the receivers so elected; and the warrants for the collection of taxes and assessments are directed to the receivers. In executing such warrants, the receivers are, in general, to be governed by the laws applicable to collectors, where not inconsistent with, or repugnant to the acts creating the office of receiver.

## CHAPTER III.

### TOWN CLERKS.

#### SECTION I.

##### ELECTION AND GENERAL DUTIES.

There shall be chosen at the annual town meeting in each town one town clerk (Laws 1866, chap. 30), who is to be elected by ballot and to hold his office for one year, and until another is chosen or appointed in his place and has qualified. 1 R. S. 343, 347. No person not an elector of the town is eligible to the office. Id. 345.

*To take oath.* Every person elected or chosen to the office of town clerk before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe before some justice of the peace, or commissioner of deeds, or the prior town clerk, the oath of office prescribed in the sixth article of the Constitution of this State. Id.; Laws 1838, chap. 172.

Such oath shall be administered without reward, and the justice, commissioner or town clerk, before whom the same shall be taken, shall also, without reward certify, in writing the day and year when the

same was taken, and shall deliver such certificate to the person by whom the oath was made. Such person, within eight days thereafter, shall cause the certificate to be filed in the office of the town clerk. 1 R. S. 345. Having taken the oath and filed the certificate as required, the person elected is ready to enter upon the discharge of his duties. See Form No. 26.

If any town clerk shall enter upon the duties of his office before he shall have taken such oath, he shall forfeit to the town the sum of fifty dollars. 1 R. S. 347.

*Neglect to take oath.* If any person elected or appointed to the office of town clerk shall not take and subscribe such oath, and cause the certificate thereof to be filed as above required, such neglect shall be deemed a refusal to serve. Id. 345.

*Penalty for refusal to serve.* If any person elected or appointed to the office of town clerk shall refuse to serve, he shall forfeit to the town the sum of fifty dollars. Id. 347.

*Resignation.* Should any town clerk desire to resign his office, he may give notice of his intention so to do to any three justices of the peace of the town, who may, for sufficient cause shown, accept the resignation.

Whenever the justices shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town, and it then becomes his duty

to call a special town meeting to supply the vacancy. 1 R. S. 348.

Neither the resignation nor acceptance need be in writing. 3 Hill, 243.

*Vacancy, how filled.* If any town shall neglect, at its annual town meeting, to choose a town clerk, it shall be lawful for any three justices of the peace of the said town, by warrant under their hands and seals, to appoint such officers; and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same powers and be subject to the same duties and penalties, as if they had been chosen by the electors.

If the justices of the peace fail to appoint, it is the duty of the town clerk, within thirty days thereafter, to call a special town meeting, for the purpose of electing a town clerk. 1 R. S. 347, § 56, as amended Laws of 1874, ch. 543, § 31.

Under the general provision of the statute, authorizing public officers to hold over after their term of office has expired, until a successor shall be duly qualified (1 R. S., 5th ed. 409, § 14), the old town clerk has power to call the special town meeting mentioned in the act of 1874.

The justices making such appointment, shall cause such warrant to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed. 1 R. S. 347. See Form No. 27.

All vacancies in the office of town clerk shall be supplied by the justices of the town, in the manner provided in the above sections. *Id.*

Whenever a vacancy shall occur in any town office, which justices of the peace are authorized to fill, and there shall be less than three justices residing in the town in which such vacancy shall occur, the justice or justices residing in such town may associate with themselves one or more justices of the peace from any adjoining town as may be necessary to make the number of three; and such three justices shall have the like power to fill such vacancy as if they were respectively justices of the town in which the vacancy occurred. *Id.*

*To have custody of books and file papers.* The town clerk of each town in this State, shall have the custody of all the records, books and papers of the town; and he shall duly file all certificates of oaths, and other papers required by law to be filed in his office. 1 R. S. 350.

*To keep minutes, etc.* He shall transcribe, in the book of records of his town, the minutes of the proceedings of every town meeting held therein; and he shall enter in such book every order or direction, and all rules and regulations, made by any such town meeting. Id.

*To deliver copies of entries.* He shall deliver to the supervisor, before the annual meeting of the board of supervisors of the county, in each year, certified copies of all entries of votes for raising money, made since the last meeting of the board of supervisors, and recorded in the town book. Id.

*To return names of constables.* The town clerks, immediately after the qualifying of any constables chosen or appointed, in their respective towns, shall return, to the clerks of their respective counties, the names of such constables.

If any town clerk shall wilfully omit to make such return, such omission is hereby declared to be a misdemeanor; and on conviction thereof, the person offending shall be adjudged to pay a fine not exceeding ten dollars. Id.

*Copies of papers evidence.* Copies of all papers duly filed in the office of the town clerk, including those

filed with him as clerk of the commissioners of common schools, and transcripts from the book of records, certified by him, shall be evidence, in all courts, in like manner as if the originals were produced. 1 R. S. 350.

*To deliver to supervisors names of assessors and collectors.* The clerks of the cities of New York, Albany, Hudson, Schenectady and Troy, and the town clerks of the several towns, shall yearly, before the first day of October in each year, certify and deliver to the supervisors of their respective towns, the names of all the assessors and collectors in their respective cities and towns, that the same may be delivered to the board of supervisors at their next meeting. Id. 419.

*To be clerk of town meeting.* The town clerk last before elected or appointed, shall be the clerk of the town meeting, and shall keep faithful minutes of its proceedings, in which he shall enter, at length, every order or direction, and all rules and regulations, made by such meeting.

If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present, shall act as clerk of the meeting. Id. 342.

The minutes of the proceedings of every town meeting, subscribed by the clerk of such meeting and by the officers presiding, shall be filed in the office of the town clerk, within two days after such meeting. Id. 343.

*Time for transacting business at town meetings.* The time for transacting the business of the several towns, which requires a vote of the people thereof, is fixed by statute at 12 o'clock M. of the day of the annual town meeting for the election of town officers, and is to continue without adjournment till finished; excepting the balloting for town officers, and the duties connected therewith. Laws of 1874, ch. 173. But no question involving the expenditure of money can be introduced after 2 o'clock P. M. of the same day. Id. But this act does not apply to any town wherein the manner of holding town meetings is regulated by special act. Id. §3.

*To keep poll list.* When the election is by ballot, a poll list shall be kept by the clerk of the meeting, on

which shall be entered the name of each person whose vote shall be received. 1 R. S. 344.

*Statements of canvass.* The canvass being completed, a statement of the result shall be entered, at length, by the clerk of the meeting, in the minutes of its proceedings to be kept by him as before required, which shall be publicly read by him to the meeting; and such reading shall be deemed notice of the result of such election, to every person whose name shall have been entered on the poll list as a voter.

*To notify persons of election.* The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose name shall not have been entered on the poll list as a voter, a notice of his election. Id.

When a vacancy in any town office is filled by the justices, the town clerk is to give notice of the appointment to the person appointed. Id. 347.

*To notify county clerk of election of justice.* The clerk of every town meeting, at which an election for justice of the peace shall have been had, shall, within ten days thereafter, transmit to the clerk of his county, a certificate of the result of such election, under his hand, which shall be evidence of the facts therein certified. Laws 1829, chap. 356.

*May administer oath to town officer.* The oath of office of any town officer, except justices of the peace and commissioners of deeds, may be subscribed and

sworn before the town clerk of the town in which such officer shall be elected; such oath shall be administered and certified without fee or reward. Laws 1838, chap. 172.

*Special town meetings.* Whenever twelve or more persons eligible to the office of supervisor of the town shall, by application in writing, signed by them and addressed to the town clerk, require a special town meeting to be called, for the purpose of raising moneys for the support of common schools, or of the poor, when a proposition to that effect shall not have been acted upon at the annual town meeting; or for the purpose of deliberating in regard to the institution or defense of suits, or the raising of moneys therefor, it is made the duty of the town clerk, at least eight days before the holding of any special town meeting, to cause notices thereof, under his hand, to be posted at four or more of the most public places in the town; which notices shall specify the time, place and purposes of such meeting. 1 R. S. 341.

*Special town meetings to fill vacancy.* When the justices receive the resignation of any town officer, they are to give notice forthwith to the town clerk of the town.

If any person chosen or appointed to the office of supervisor, assessor, commissioner of highways, or overseer of the poor, shall refuse to serve, or shall die or resign, or remove out of the town, or become incapable of serving before the next annual town meeting after he shall have been chosen or appointed, the town clerk shall, within eight days after the happen-

ing of such vacancy, call a special town meeting for the purpose of supplying the same. 1 R. S. 348.

The meeting is to be called by posting the notices as prescribed above.

If any town shall omit or neglect, at its annual town meeting, to choose its proper town officers, or any of them, three justices of the peace of the town may, by a warrant under their hands and seals, within five days after such town meeting, appoint such officer or officers. If the justices of the peace fail to so appoint, it is the duty of the town clerk, within thirty days thereafter, to call a special town meeting, for the purpose of electing such officer or officers. Laws of 1874, ch. 543.

*To approve bond of constable.* Every person chosen or appointed to the office of constable, before he enters on the duties of his office, and within eight days after he shall be notified of his election or appointment, shall take and subscribe the oath of office prescribed by the Constitution, and shall execute, in the presence of the supervisor or town clerk of the town, with one or more sureties, to be approved of by such supervisor or town clerk, an instrument in writing, by which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any execution which shall be delivered to him for collection.

The supervisor or town clerk shall indorse on such instrument his approbation of the sureties therein named, and shall then cause the same to be filed in the office of the town clerk; and a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts, of the execution thereof by such constable and his sureties. Id. 346.

*To classify justices of new town.* On the erection of a new town, an election for justices shall be held at the next general election, unless a special election shall be ordered by law.

If there be one or more justices then residing in such new town, they shall be deemed justices thereof, and shall hold their offices according to their respective classes; and only so many justices shall be chosen as shall be necessary to complete the number of four for such town. 1 R. S. 311.

After the election of justices in such new town, the supervisor thereof shall, within six days after the completion of the canvass by the county canvassers, give notice in writing, to the justices elected and to the town clerk, of the time and place where he will meet them, to determine by lot the classes of such justices; which notices shall be served at least six days, and not more than twelve, previous to the time appointed therein for such meeting.

At the time and place so appointed, the supervisor and town clerk shall cause to be written on separate pieces of paper, as near alike as may be, the numbers one, two, three, four, if there shall have been four justices elected, and shall cause them to be rolled up as nearly alike as may be, and deposited in a box. The persons elected justices shall severally draw one of the said pieces of paper, and shall be classed according to the number written on the paper so drawn by him, and shall hold his office for such number of years, either one, two, three, or four, as shall correspond with such number so drawn.

If less than four justices shall have been chosen, then ballots shall be prepared as above directed, with numbers written thereon, to correspond with the numbers of the classes which shall be vacant, and each person elected shall, in like manner, proceed to draw

one of the said ballots, and shall be classed according to the number so written on the ballot drawn by him, and shall hold his office according to such number.

If any person elected a justice shall neglect to attend to such drawing, the supervisor shall draw for him. If the supervisor be absent from his town, or unable to serve, or his office be vacant, the town clerk shall give the notice herein required, and perform the duties enjoined on such supervisor.

Duplicate certificates of such drawing, and of the result thereof, shall be made and certified by the supervisor and town clerk, or such one of them as shall attend the same, one of which shall be filed with the town clerk and the other with the county clerk, and shall be recorded by the said clerks in the books in which the canvasses of votes shall have been recorded; and shall be conclusive evidence of the respective classes to which the persons so elected justices, belong. 1 R. S. 111.

*When two justices are chosen.* Whenever there shall be two or more justices chosen at any election, one or more of whom shall be chosen to supply a vacancy, and one for the regular term, the class to which each justice shall belong, and the term for which he shall serve, shall be determined by lot, in the presence of the supervisor and town clerk, within the time and in the manner herein before directed; the same notice shall be given, the same proceedings had, and the result certified with the like effect as before declared. Id. 112.

*In relation to strays.* Whenever any person shall at any time have any strayed horse upon his inclosed land, or shall, between the first day of November in any year, and the first day of April thereafter, have any strayed neat cattle or sheep upon his inclosed lands, such person shall, within ten days after the coming of any such stray thereon, deliver to the clerk of the town within which such lands shall be, a note in writing, containing the name and place of abode of such person, and the age, color and marks, natural and artificial of each stray, as near as may be. Id. 351, § 17.

If any person upon whose inclosed lands any such neat cattle, horses or sheep shall come, shall neglect to deliver such note in writing to the town clerk, within the time above required, he shall be precluded from all the benefits of this article, and from all claim to compensation for keeping such strays. Id. § 18.

The town clerk, on the receipt of every such note, shall enter the same, at large, in a book to be provided by him for that purpose; for which entry he shall receive six cents each for all neat cattle and horses, and three cents for each sheep; to be paid by the person delivering the note. Id. § 19.

The book in which such entries shall be made shall always be kept open to inspection; and no fee shall be taken by the clerk for any search therein. Id. § 20. See further on this subject, *ante*, page 15.

*Duty as to floating timber.* The statutes provide for the recovery by the owner of timber, logs, boards,

etc., that have drifted on to the lands of another. The statute further provides, that, if the owner of such lumber shall not, within three months from and after the time when such lumber shall have been so drifted, take the same away, it shall be the duty of the owner or possessor of the land on which the same may have been drifted, to deliver to the clerk of such city or town a note in writing, signed by him, describing, as near as may be, such lumber, together with the quantity and mark or marks thereof, and the place where the same is lodged.

It shall be the duty of the clerk, to whom any such note in writing shall be delivered, to file the same in his office, and to produce the same for the inspection of any person who shall request it.

If no person shall, within six months after the filing of such note in writing, claim the lumber described therein, it shall be the duty of the owner or possessor of the land whereon the same shall have been drifted, to give notice thereof in writing to the clerk of the city, or town, who shall cause such lumber to be sold by public auction, after giving, at least twenty days' previous notice of such sale, by advertisement, to be posted up in at least three of the most public places in such city or town.

The clerk making the sale shall be entitled to the same fees therefor as are allowed to officers making sales on executions issued out of justices' courts. The moneys arising from the sale shall be applied —

1. To the payment of such fees; and,
2. To the payment of the damages, which the owner or possessor of the land shall have sustained

by reason of such lumber, and which may accrue in the removal thereof.

3. The surplus, if any, shall be paid by the clerk of the city, or town, to the treasurer of the county wherein such lumber shall have been found, for the use of the poor. 2 R. L. 236, §§ 4, 5, 6, 7.

Before the clerk shall pay out any of said moneys for the damages of the owner or possessor of the land, such damages shall be assessed by any two fence viewers of the city or town, and a specification thereof, signed by such fence viewers, shall be filed in the office of such clerk. 1 R. S. 698.

*As to papers and books of justice.* In case any justice shall remove out of the town in which he was elected, before or after his term of office expires, he shall deposit with the town clerk of such town, all the books and papers in the custody of such justice, relating to any cause or matter which shall have been heard by him, or relating to any proceeding or cause which shall have been commenced before him.

Whenever any justice shall be removed from office by the county court, he shall, within ten days after receiving notice of such removal, and upon the demand of the town clerk, deliver to such clerk all the books and papers in the custody of such justice, relating to any cause or matter which shall have been heard by him, or relating to any proceedings or cause which shall have been commenced before him.

In every book of minutes delivered by any justice to the town clerk, pursuant to the foregoing provisions, in which he shall have kept the docket of any

judgments, he shall enter a certificate, to be subscribed by him, stating that the judgments entered in such book, were duly rendered as therein stated, and that the amounts appearing by such book to be due on such judgments, respectively, have not been paid to his knowledge.

In case any justice shall die, or his office shall in any way become vacant, and any books, or papers, belonging to such justice in his official capacity, shall come to the hands of any person, the town clerk may demand and receive such books and papers from the person having the same in his possession.

If any books, or papers, required by the preceding sections to be delivered to the town clerk, be withheld, the like proceedings may be had to compel the delivery of the same, as are provided in the fifth article of the sixth title of the fifth chapter of the first part of the Revised Statutes. 2 R. S. 271.

The manner of compelling the delivery of books, will be given hereafter.

*Account for support of poor.* In those counties where the respective towns are made liable for the support of their poor, it shall be the duty of the town clerk to exhibit, at the annual town meetings, the accounts for the support of the poor therein the preceding year, as the same shall have been allowed and passed by the board of town auditors, which accounts shall be openly and distinctly read by the clerk of the meeting; and the overseers of the poor shall also present an estimate of the sum which they shall deem necessary to supply any deficiency of the preceding

year, and to provide for the support of the poor for the ensuing year. 1 R. S. 627.

Where the board of supervisors of a county have adopted the act of 1845 (chap. 334), in relation to the poor, "in the county of Livingston and such other counties as may adopt the provisions of the act," the accounts of the overseer of the poor as audited shall be filed with the town clerk; and at every annual meeting, the town clerk shall produce such poor account for the then preceding year, and read the same if required by the meeting. Laws 1845, ch. 334.

*Notice of tax sale.* The comptroller of the State is required to transmit to the county treasurer of each county, copies of the list or statement of lands charged with unpaid tax and interest. The county treasurers are to transmit two copies of such list to the town clerk of each town. Laws 1855, chap. 427, tit. 2.

Every town clerk to whom such copies shall be delivered, shall give notice, at the opening of every town meeting for the election of town officers, that lists of all lands advertised for sale for taxes by the comptroller, are deposited in his office, and that they may be there seen and examined, at all reasonable hours, free of expense. Id.

The omission of the town clerk to give the notice required above will not render the other proceedings on the sale for taxes nugatory, and render void a title obtained under the sale. *Pierce v. Hall*, 41 Barb. 142.

*As to town houses.* The electors of any town of this State in which there shall not be a town house,

at any annual town meeting, may by resolution, vote a sum of money for the purchase of a site for, and the building of a town house, not exceeding in number of dollars, twice the number of electors in said town, provided that a notice of intention to propose such a resolution, shall have been posted, within fifteen days of, and not less than ten days preceding said meeting, in five of the most public places in said town. Laws 1847, chap. 197.

Upon proper representation of the action of any town under the first section of this act, the board of supervisors of the county in which such town is situated, may cause the sum so voted, to be collected with the other expenses of said town; or may require the question to be again submitted to the electors of said town at the next annual town meeting. *Id.*

Conveyances for sites, shall be made to the towns; sites shall be purchased and houses erected by the supervisor, town clerk and the justices of the town, and the houses shall be controlled by the supervisor, town clerk and the justice of the peace residing nearest the same; and the electors may, from time to time, vote such sum as may be necessary to keep any town house in repair and insured. *Id.*

*To file chattel mortgages.* Town clerks are required to file all chattel mortgages presented to them for that purpose, and to indorse thereon the time of receiving the same, and shall deposit the same in their respective offices, to be kept there for the inspection of all persons interested. Laws 1833, chap. 279.

It shall be the duty of the clerks of the several

towns and counties in this State, in whose offices chattel mortgages are by law required to be filed, to provide proper books, at the expense of their respective towns, in which the names of all parties to every mortgage, or instrument intended to operate as a mortgage of goods and chattels, hereafter filed by them, or either of them, shall be entered in alphabetical order, under the head of mortgagors and mortgagees, in each of such books respectively. Laws 1849, chap. 69.

It shall be the duty of the said several clerks to number every such mortgage or copy so filed in said office, by indorsing the number on the back thereof, and to enter such number in a separate column in the books in which such mortgages shall be entered, opposite to the name of every party thereto; also the date, the amount secured thereby, when due, and the date of the filing of every such mortgage. *Id.*

The said several clerks, for services under this act, shall be entitled to receive therefor the following fees: for filing every such mortgage or copy, six cents; for entering the same in books, as aforesaid, six cents. *Id.*

Where the office of town clerk is vacant, one having charge of his affairs may file a mortgage. *Bishop v. Cook*, 13 Barb. 326. So a town clerk's clerk may, during the absence of the town clerk, file a mortgage. *Dodge v. Potter*, 18 id. 193.

When a chattel mortgage is once filed with the town clerk, it cannot again be removed, even though it has expired by lapse of time or otherwise. Once filed, it becomes a public record, and must so remain.

*To record births, marriages and deaths.* Every marriage certificate signed by a magistrate, if presented to the clerk of the city or town where the marriage was solemnized, or to the clerk of the city or town where either of the parties reside, within six months after such marriage, shall be filed by such clerk, and shall be entered in a book to be provided by him, in the alphabetical order of the names of both the parties, and in the order of time in which such certificate shall be filed.

Every such certificate signed by a minister, may also be filed and recorded in like manner, if there be indorsed thereon or annexed thereto, a certificate of any magistrate residing in the same county with such clerk, setting forth that the minister by whom such certificate is signed, is personally known to such magistrate, and has acknowledged the execution of the certificate in his presence; or that the execution of such certificate, by a minister or priest of some religious denomination, was proved to such magistrate, by the oath of a person known to him, and who saw the certificate executed.

The entry of every such certificate shall specify,

1. The names, and places of residence of the persons married:

2. The time and place of marriage:

3. The name and official station of the person signing the certificate: and,

4. The time when the certificate was filed. 2 R. S. 141.

It shall be the duty of the town clerk of each of the towns in this State, within fifteen days after the

receipt of a certificate of birth, marriage or death, to record the same in a book to be provided by him for that purpose, and to transmit a copy thereof, or of an abstract thereof in such form as shall be prescribed by the secretary of state, to the county clerk or city inspector, whose duty it shall be within fifteen days after the receipt thereof to forward an abstract duly certified by him, in such form as shall be prescribed as aforesaid, to the secretary of state, who shall file the same in his office, make a complete abstract thereof, and transmit the same to the legislature as soon as may be practicable thereafter.

For the performance of the duties herein required, the officers of the several districts, towns and counties rendering the services herein specified, shall be entitled to such compensation for their services and expenses incurred by them, as may be audited and allowed by the boards of supervisors of such counties respectively. Laws 1847, chap. 152.

The Revised Statutes provides that there shall be allowed to every clerk of a city or town, for filing and entering a certificate of marriage, twenty-five cents; and ten cents for a copy of such certificate, or of the entry thereof. 2 R. S. 141.

*To deliver books, papers and money to successor.* At the expiration of the term of office of a town clerk, it is the duty of his successor, immediately after he shall have entered upon his duties, to demand of him all the records, books and papers under his control belonging to such office, and it is the duty of such town clerk to deliver, when so requested, upon oath,

to his successor, all such books and papers, and to pay over the balance of moneys remaining in his hands as ascertained by the auditors of town accounts. 1 R. S. 359. The oath may be administered by the officer to whom such delivery is made. Id. In case of the death of such town clerk, it is made the duty of his executors or administrators to make such delivery upon like oath. Id. If such town clerk, or, in case of his death, his executors or administrators, shall neglect or refuse, when lawfully requested, to make such delivery, he or they shall forfeit to the town, for each offense, the sum of two hundred and fifty dollars, and shall be deemed guilty of a misdemeanor. Id. § 9. See Forms 28-32.

*Delivery, how compelled.* If such demand is not complied with, it is the duty of the person entitled to the possession of such books, papers, etc., to proceed to compel a delivery thereof in the manner following (Id.): He may make complaint of such refusal or neglect to any justice of the supreme court, or the county judge of the county where the person so refuses shall reside, and if such officer shall be satisfied from the testimony offered, that any such books or papers are withheld, he shall grant an order directing the person so refusing to show cause before him, within some short and reasonable time, why he should not be compelled to deliver the same. If, upon an inquiry before said officer, the person charged with withholding such books or papers shall make affidavit that he has truly delivered over to his successor all such books and papers in his custody or appertaining

to his office, within his knowledge, all further proceedings before such officer shall cease, and the person complained of shall be discharged. If he does not make such oath, then the officer shall, by warrant, commit such person to the jail of the county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law. 1 R. S. 125.

In case the person complained against should not make such oath, such officer may, if required by the complainant, issue a warrant to the sheriff or constable, commanding him to search, in the day time, such places as shall be designated in such warrant, for such books and papers, and to seize and bring them before him. If the officer, upon examining such books and papers, shall conclude that they appertain to the office of town clerk, he shall cause them to be delivered to the complainant. *Id.* The same proceeding may be had against any third person who shall come in possession of such books and papers and refuse or neglect, upon a proper demand, to deliver them to his successor. *Id.* See Forms Nos. 28-32.

*Compensation and fees.* The town clerk is entitled to compensation at the rate of two dollars per day for each day actually and necessarily devoted by him to the service of the town in the duties of his office. Laws 1857, chap. 615, as amended Laws 1870, chap. 242.

He is also entitled to the sum of fifty cents for drawing and certifying a jury to assess damages in laying out a road, as provided hereafter in the sec-

tion relative to their duties as to highways. Laws 1847, chap. 455.

Their fees for the discharge of their other duties are given in connection with those duties. Being members of the board of town auditors, their compensation cannot be audited by that board, but their bill must be made out in detail, verified and presented to the board of supervisors as other demands are presented. Laws 1869, ch. 855. See Oath to account, Form No. 33.

## SECTION II.

### DUTY UNDER THE ELECTION LAW.

The town clerk, assessors and supervisor of a town are to divide the town into election districts, when such division has not already been made, and to alter such districts as often as may be necessary. Although the first section given below provided for the original division, and is therefore in some respects expired, yet, as it contains the method of procedure on the division or alteration of a town, we quote it in full:

*Town; how divided into election districts.* The supervisor, assessors and town clerk of each town shall meet, at the town clerk's office in such town, on the first Tuesday in September next, at ten o'clock in the forenoon, and form themselves into a board. And in case a majority of said officers, for any cause, do not attend on that day, it shall be the duty of those who do attend to adjourn to some future day,

not exceeding five days, and shall immediately thereupon give notice to those officers who do not attend, of the time of such adjournment; and it shall be the duty of all of said officers to attend on said adjourned day, and to proceed in the same manner as though a majority had attended on the day appointed by law; and adjournments from time to time may be had by said officers, as occasion may require; but no such adjournment shall extend beyond the first day of October in said year. They shall, in all cases where any town shall contain more than five hundred electors, divide the same into a convenient number of election districts, so that each district shall be in a compact form within their town, and shall contain not more than five hundred electors, as far as the number can be ascertained. But where any town shall contain less than five hundred electors, the board may, in their discretion, divide the same into districts. They shall make a certificate of such division, under their hands, in which such districts shall be numbered and described by known boundaries, which shall be immediately filed in the office of the town clerk. The town clerk shall, at least two weeks before the day of election, put up copies of the said certificates in at least four public places in each of the said districts, within ten days after such meeting; and he shall deliver a copy thereof to an inspector in each district before the day of election. Laws 1842, chap. 130, § 15. See Form No. 6.

*Alterations of districts.* In every succeeding year the same officers shall meet at the town clerk's office,

on the first Monday of October, at ten o'clock in the forenoon, and form a board. They shall determine whether any alteration in the existing election districts be necessary or expedient, and shall have power to make the same, subject to the same restrictions and limitations contained in the last preceding section; and shall, in like manner, make a certificate of such alterations, exhibiting the districts as altered and their numbers respectively; which certificate shall be filed in the town clerk's office. Such alteration shall not take effect until after the then next general election, except in case of the alteration, erection or division of a town, in which case it shall take effect immediately. Laws 1842, ch. 130, § 16. See Form No. 6.

*New town to be divided.* When any new town shall be formed, the supervisor, town clerk and assessors therein, shall meet at the town clerk's office, on or before the first Tuesday in September preceding the first general election to be held in such town, and divide the same into districts as herein prescribed; and the same proceedings, in all respects, shall be had as herein provided in respect to towns now existing. Id. § 17.

*To appoint polling places.* The common council of each city, and the said town officers of each town, on the first Tuesday of September next, and on the first Monday in October in each year thereafter, shall designate the place in each election district in such city or town at which elections shall be held during the year; and they shall thereupon give notice, written or printed, to be posted in at least eight public

places in each district, containing a description of such place so designated, and of the time of opening and closing the poll. And in case a majority of said common council in any city, or a majority of said town officers, shall for any cause fail to attend for the purposes aforesaid, on the days above mentioned, the same powers are given in relation to adjournments, and the same duties are required in all particulars, as are given in the fifteenth and sixteenth sections of this title to town officers, except that no adjournments shall extend beyond the fifteenth day of October in each year. Laws 1842, ch. 130, § 18.

*When to appoint inspectors.* In case the inspectors of election in any town shall not be chosen or appointed, as provided for in the statute, or any of them shall be absent, or shall have ceased to be a resident of such district, or unable to attend and hold any election in their district, the supervisor, town clerk and justices of the peace in such town, shall meet at such time and place as shall be appointed by the supervisor, or in case of his absence or inability, or a vacancy in his office, by the town clerk, and shall designate and appoint so many electors of such election district, as shall be necessary to supply such vacancy, to be inspectors of election for such district, and shall file a certificate of such appointment in the office of the town clerk; and the persons thus appointed shall be inspectors of such election for such district. And all vacancies which may exist or occur in the office of inspector of election in any city, shall be filled by the common council of such city. Id. § 22.

## SECTION III.

## DUTIES AS TO HIGHWAYS.

The order of the commissioners of highways, dividing a town into road districts, is to be lodged with the town clerk, and is by him to be entered in the town book. 1 R. S. 525.

If a town meeting shall, by their vote, determine that a sum over and above the amount allowed by law, that is, the two hundred and fifty dollars allowed by the Revised Statutes, will be necessary for the improvement of the roads and bridges, or to pay any balance that may be due, the town clerk shall enter such resolution as shall be agreed to in the minutes of the meeting, and deliver a copy thereof to the supervisor of the town. Laws 1832, chap. 274.

The town clerk, in connection with the commissioners of highways and justices of the peace, may consent to the authorization, by the board of supervisors, of the supervisor of a town to borrow money for building or repairing roads and bridges. Laws 1869, chap. 855.

*Notify overseers of highways.* When the commissioners of highways appoint overseers, they are to file their order with the town clerk, who is to notify each overseer of his appointment, as in the case of the election of officers. Laws 1865, chap. 522.

*List of inhabitants of road district.* Overseers of highways are required to make and deliver to the

town clerk a list of all the inhabitants liable to work on highways in his district. This list the town clerk is to deliver to the commissioners of highways. 1 R. S. 506.

The commissioners of highways are to add the assessments to the lists and file them with the town clerk, who is to make a copy of each list, which copies the commissioners are to deliver to the overseers. Id. 507, as amended 1863, chap. 444.

The order of the commissioners and surveyor, laying out, altering or discontinuing a road, is to be filed with the town clerk, who is to record the same and note the time of the recording. 1 R. S. 513.

The clerk, in recording the order and survey, acts as a ministerial officer, and he cannot refuse to record them because of some supposed omission or mistake, or because the commissioners have not taken and recorded the oath; the clerk may be compelled, by mandamus, to make the record. *People v. Collins*, 7 Johns. 549.

It shall be the duty of the town clerk, whenever any order of the commissioners for laying out, altering or discontinuing a road shall be received by him, to post a copy of such order on the door of the house where the town meeting is usually held; and the time hereinafter limited for appealing from any such order, shall be computed from the time of recording the same. 1 R. S. 513.

All applications, certificates and other papers relative to the laying out, altering or discontinuing of any road shall be filed by the commissioners, as soon

as they shall have decided thereon, in the office of the town clerk of the town. 1 R. S. 518.

Any person conceiving himself aggrieved, or the commissioner or commissioners on the part of the town, feeling dissatisfied by any assessment of damages on the laying out, altering or discontinuing of a road, may, within twenty days after the filing thereof, signify the same by notice in writing, and serving the same on the town clerk and on the opposite party that is, the persons for whom the assessments were made, or the commissioner or commissioners of highways, as the case may be, asking for a jury to reassess the damages and specifying a time, not less than ten nor more than twenty days from the time of filing said assessment, when such jury will be drawn at the clerk's office of an adjoining town of the same county by the town clerk thereof; which notice shall be served upon said opposite party within three days after service upon the town clerk as aforesaid, and may be served personally or by being left at the dwelling house of the party with some person in charge thereof, or if there be no such person, or the house be closed, then by fixing the same upon the outer door of said dwelling house. Laws 1847, chap. 455.

At the time and place mentioned in the preceding section, the town clerk of such adjoining town, having received three days' previous notice that such jury is to be drawn, from the person or party asking a reassessment, shall deposit in a box the names of all such persons then residents of his town, whose names are on the last list filed in said town clerk's office of

those selected and returned as jurors, pursuant to article second, title four, chapter seventh, part third of the Revised Statutes, who are not interested in the lands through which such road shall be located, nor of kin to either or any of the parties, and shall draw therefrom the names of twelve persons, and shall make a certificate of such names and the purposes for which they were drawn, and shall deliver the same to the party first asking for the reassessment. Laws 1847, ch. 455.

Town clerks shall be allowed the sum of fifty cents for drawing and certifying a jury as provided by this act. Id.

## SECTION IV.

### DUTY UNDER THE SCHOOL LAW.

The act of 1864, chapter 555, prescribes the following duties of town clerks in relation to common schools.

It shall be the duty of the town clerk of each town :

1. Carefully to keep all books, maps, papers and records of his office touching common schools, and forthwith to report to the supervisor any loss of or injury to any of them which may happen.

2. To receive from the supervisor the certificates of apportionment of school moneys to the town, and record them in a book to be kept for that purpose.

3. Forthwith to notify the trustees of the several school districts and separate neighborhoods of the filing of such certificates.

4. To see that the trustees of the school districts and separate neighborhoods make and deposit with him their annual reports, within the time prescribed by law, and to deliver them to the school commissioner on demand.

5. To distribute to the trustees of the school districts and separate neighborhoods, all blanks and circulars which shall be delivered or forwarded to him by the State superintendent or school commissioner for that purpose.

6. To receive from the supervisor, and record in a book kept for that purpose, the annual account of the receipts and disbursements of school moneys required to be submitted to the town auditors, together with the action of the town auditors thereon, and to send a copy of the account and of the action thereon, by mail, to the superintendent of public instruction, whenever required by him, and to file and preserve the vouchers accompanying the account.

7. To receive and to record, in the same book, the supervisor's final account of the school moneys received and disbursed by him, and deliver a copy thereof to such supervisor's successor in office.

8. To receive from the outgoing supervisor, and file and record in the same book, the county treasurer's certificate that his successor's bond has been given and approved.

9. To receive, file and record the descriptions of the school districts and neighborhoods, and all papers

and proceedings delivered to him by the school commissioner pursuant to the next title of this act.

10. To act, when thereto legally required, in the erection or alteration of a school district, as in the next title in this act provided.

11. To order notice of a special district meeting to be given in the case specified in the seventh title in this act, in the manner therein provided.

12. To receive and preserve the books, papers and records of any dissolved school district, which shall be ordered, as hereinafter provided, to be deposited in his office.

13. To perform any other duty which may be devolved upon him by this act, or by any other act touching common schools.

§ 2. The necessary expenses and disbursements of the town clerk, in the performance of his said duties, are a town charge, and shall be audited and paid as such.

*In the alteration of a district.* If the trustees of any such district refuse to consent to the alteration of a district, the commissioner may make and file with the town clerk his order making the alteration, but reciting the refusal, and directing that the order shall not take effect, as to the dissenting district or districts, until a day therein to be named, and not less than three months after the notice in the next section mentioned. Laws 1864, chap. 555, tit. 6, § 3, as amended 1867, chap. 406.

Within ten days after making and filing such order, he shall give at least a week's notice in writing to

one or more of the assenting and dissenting trustees of any district or districts to be affected by the proposed alterations that at a specified time and at a named place within the town, in which either of the districts to be affected lies, he will hear the objections to the alteration. The trustees of any district to be affected by such order may request the supervisor and town clerk of the town or towns, within which such district or districts shall wholly or partly lie, to be associated with the commissioner. At the time and place mentioned in the notice the commissioner or commissioners, with the supervisors and town clerks, if they shall attend and act, shall hear and decide the matter; and the decision shall be final, unless duly appealed from. Such decision must either confirm or vacate the order of the commissioner, and must be filed with and recorded by the town clerk of the town or towns in which the district or districts affected shall lie. As amended 1865, chap. 64. See form 34.

The supervisor and town clerk shall be entitled each to one dollar and fifty cents a day, for each day's service in any such matter, to be levied and paid as a charge upon their town. Laws 1864, chap. 555, title 6.

*Duty in fixing place for holding town meetings.*

Whenever fifteen electors of any town shall, ten days before any annual town election, file a request in writing with the town clerk, that they desire to have the question as to where the next annual town election shall be held, it shall be the duty of such

clerk to prepare and have at such election, a box in which shall be deposited the ballot of each elector offering to vote thereon, which ballot shall be written or printed, or both, and shall designate the place in such town where the elector voting the same shall desire the next town election to be held, etc. Laws of 1873, ch. 722.

## SECTION V.

### OF THE BOARD OF TOWN AUDITORS.

*To destroy paid bonds.* Whenever a town has a public debt, consisting of bonds or other evidences of debt issued on the credit of said town, it shall be the duty of the supervisor thereof, and he is hereby directed and required, to make a report to the board of supervisors of the county at the next annual session thereof after the passage of this act, and at every annual session thereafter, of the amount of the public debt of his said town.

The said report shall be in tabular form, specifying the different acts under which the bonds or debts were issued, with the rate of interest thereon, the amount unpaid at the time of the election of such supervisor, and the amount of debt paid at the date of his said report, and coming due during his term of office.

The report so made to the board of supervisors shall be published in the annual report of the proceedings of said board.

It shall also be the duty of such supervisor, and he is also directed and required, at the expiration of his term of office, at the annual town meeting for the

election of town officers, to make and present thereto a duplicate copy of his report of the public town debt so made to the said board of supervisors, including and adding thereto the amount of bonds issued, and the amounts and interest paid, since the date of said report up to the day and date of his term of office, duly attested before a justice of the peace of his said town, and which said report shall be filed in the town clerk's office of the town, subject to the inspection, when required, of any elector thereof.

All such bonds, and coupons thereof, paid, shall be canceled and burned by the town auditors of the town, at a meeting thereof to be held for that purpose within ten days previous to the annual town meeting; and a record thereof shall be filed, signed by the said board, in the office of the clerk of said town.

Any supervisor or other officer neglecting or refusing to perform any duty imposed by this act, shall be deemed guilty of a misdemeanor, and shall forfeit, upon conviction, the sum of two hundred and fifty dollars for such offense, and be imprisoned not exceeding sixty days. Laws of 1870, ch. 552.

A statute passed April 17, 1871, requires commissioners of towns, cities and villages, appointed under the several acts to facilitate the construction of railroads, to present town bonds and coupons paid by them, before the boards of auditors; and makes it the duty of such boards to cancel the same, by cutting

out a portion of each bond or coupon so presented, in such manner as to effectually prevent the repayment of the same; and to sign and file a certificate thereof. Laws of 1871 ch. 537.

*To examine accounts of town officers.* In each town, the supervisor and town clerk, together with the justices of the town, or any two of such justices, shall constitute a board of auditors to examine the accounts of the overseers of the poor, the commissioners of common schools, and the commissioners of highways of such town, for moneys received and disbursed by them. 1 R. S. 355.

*When to meet.* The board of auditors of town accounts shall meet, for the purpose of examining the same, annually, in each town in this State, on the Tuesday preceding the annual town meeting to be held in such town. Id.

*Audited accounts, how disposed of.* The accounts so audited shall be delivered, with the certificate of the auditors, to the town clerk, to be by him kept on file for the inspection of any of the inhabitants of the town. They shall also be produced by the town clerk at the next annual town meeting, and shall be there read by him, if the same shall be required by the meeting. Id. See Form 35.

*Auditors of supervisor's account.* The justices of the town, or a majority of them, and the town clerk shall, on the Tuesday preceding the annual town meeting in each year, examine and audit the accounts of the

supervisor, for moneys received and disbursed by him. The accounts so audited shall be filed in the office of the town clerk, as above provided. 1 R. S. 355.

On Tuesday preceding the annual town meeting, the supervisor must account with the justice of the peace and town clerk of the town for the disbursement of all moneys received by him.

At every such accounting, the justices and town clerk shall enter a certificate in the supervisor's book of accounts, showing the state of his accounts at the date of the certificate. If any supervisor shall neglect to account, or shall render a false account, or shall convert to his own use any money or securities which may come to his hands by virtue of his office, proceedings may be commenced against him in the name of the town of which he is supervisor, in the supreme court, by action or otherwise, by the justices of the peace and town clerk of said town, to compel him to render such account, or to recover any money or property of the town which he has not duly accounted for. 1 R. S. 349, § 5, as amended 1866, chap. 534.

The above provisions are part of the Revised Statutes. Since their adoption the office of town commissioner of common schools has been abolished. In 1863, the following act was passed, which, with the exception of the second section, is, in effect, merely a repetition of the law as it then existed.

*To examine accounts of town officers.* The town auditors in the several towns of this State shall examine the accounts of the overseers of the poor

and the commissioners of highways of such town, for all moneys received and disbursed by them, and shall meet for the purpose of examining the same, annually, in each town of this State, on the Tuesday preceding the annual town meeting to be held in each town. Laws 1863, chap. 172.

*Certain officers to account for moneys.* The commissioners of highways in each town of this State, and all town officers who receive or disburse any moneys belonging to their respective towns, shall, on the last Tuesday preceding the annual town meeting of their town, account with the board of town officers of such town for all moneys received and disbursed by them by virtue of their office. Id. § 2.

*Auditors to state account.* The said board of town auditors shall make a statement of such accounts, and append thereto a certificate, to be signed by a majority of the board, showing the state of the accounts of the said highway commissioners and other officers at the date of the certificate; which statement and certificate shall be filed with the town clerk of the town, and be by him produced at the next annual town meeting, and publicly read. Id. § 3.

At this meeting of the board of town auditors the various officers of the town who receive and disburse the moneys belonging thereto, must render an account.

*Account of highway commissioners.* The commissioners of highways of each town shall render to the board of town auditors, at the annual meeting for

auditing the accounts of town officers, an account in writing, stating —

1. The labor assessed and performed in such town.
2. The sums received by such commissioners for fines and commutations, and all other moneys received under this chapter.
3. The improvements which have been made on the roads and bridges in their town during the year immediately preceding such report, and an account of the state of such roads and bridges; and,
4. A statement of the improvements necessary to be made on such roads and bridges, and an estimate of the probable expense of making such improvements, beyond what the labor to be assessed in that year will accomplish. 1 R. S. 502, § 3. See Form 36.

*Accounts of overseers of the poor.* In those counties where there are no county poor houses established, the overseers of the poor of the respective towns shall enter, in books to be provided at the expense of their towns, an account of all matters transacted by them, relating to their official duties; of all moneys received by them, specifying from whom, and on what account; of all moneys laid out and disbursed by them; to whom, and by what authority; and specifying, in each case, whether to county poor or to town poor; the names of all persons applying for relief, and ordered to be relieved as aforesaid; the day and year when they were admitted to have relief; the weekly or other sums of money allowed for that purpose, and the cause of giving such relief. Id. 327, § 51; id. 290, § 28. See Form 37.

On the Tuesday next preceding the annual town meeting of every town, the overseers of the poor shall lay the said original books before the board of town auditors, together with a just and true account of all moneys by them received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed; which account shall be verified by the oaths of the overseers, and shall be filed with the town clerk. The board of town auditors shall compare the said account with the entries in the poor books aforesaid; shall examine the vouchers in support thereof, and shall audit and settle the same, and state the balance due from such overseers, or to them, as the case may be. No credit shall be allowed to any overseer for moneys paid, unless it shall appear that such payment was made pursuant to a legal order. Id. § 52; id. §§ 28 and 30.

Every person who, having been an overseer of the poor, shall refuse or neglect to present such original books, or to exhibit such accounts, to the board of town auditors, as required in the last section, shall forfeit the sum of \$250, to be recovered by and in the name of the overseers of the poor of such town. Id. § 53.

In auditing the accounts of the overseers of the poor, by the board of town auditors, allowance shall be made to them, for all costs to which they may have been subjected, or which shall have been recovered against them, in any suit brought by them pursuant to law; and they shall also be allowed the same daily pay, for attending to any such suit, as is

allowed them for the performance of their official duties.

Such allowances may be credited to them, in their accounts for moneys collected for penalties, and may be deducted from such moneys; and the balance of such penalties shall be paid to their successors in office, or to the county treasurer, as directed by law, in respect to such penalties.

If there be not sufficient moneys in their hands to satisfy such allowances, the same shall be paid as other town charges. 1 R. S. 630.

In those counties the board of supervisors of which have adopted the act of 1845, "relative to the temporary relief of the poor in the county of Livingston, and such other counties as may adopt the provisions of this act," the overseer of the poor shall keep a book to be procured at the expense of the town, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such person a pauper, so far as the same can be ascertained; they shall also enter in such book a statement of all moneys received by them, when and from whom and on what account received, and of all moneys paid out by them and to whom paid, and on what authority. Laws 1845, chap. 334.

On the Tuesday next preceding the annual town meeting, in every year, and also on the Thursday next preceding the annual meeting of the board of supervisors of such county in every year, the over-

seers of the poor shall lay the said book before the board of town auditors, together with a just and true account of all moneys received and expended by them for the use of the poor since the last preceding meeting of the said board of town auditors. The said board of auditors shall compare said account with the entries in the poor book aforesaid, and shall examine the vouchers in support thereof, and audit and settle the same, and state the balance due from the overseers, or to them as the case may be. The said account shall be filed with the town clerk; and at every annual town meeting, the town clerk shall produce such poor accounts for the then preceding year, and read the same if required by the meeting. Laws 1845, ch. 334.

The accounts of overseers of the poor for their services in affording the relief and support mentioned in this act, shall be audited, certified, levied, collected and paid in the manner now provided by law in respect to other town accounts. *Id.*

At the annual meeting of the board of town auditors on the Thursday preceding the annual meeting of the board of supervisors, the said board of town auditors shall make a certificate to be signed by a majority of the board, specifying the name, age, sex and native country of every person who shall have been relieved or supported by the overseers of the poor, during the then preceding year, and stating the causes, either direct or indirect, which shall have operated to render such person a pauper, and the amount of money expended for the use of each and every person so relieved or supported as allowed by the

board of auditors ; together with the amount allowed to each overseer for services rendered in relation to the temporary relief of the poor as aforesaid ; which certificate the said board of auditors shall cause to be delivered to the superintendents of the poor of such county, or one of them, on or before the first day of December then next. Laws 1845, ch. 334.

The board of town auditors shall also at their annual meeting mentioned in the last preceding section, make an estimate to be signed by a majority of the board, of the sum which they should deem necessary for the temporary relief and support of the poor the ensuing year, and to supply any deficiency in the preceding year, and shall cause the said estimate to be laid before the board of supervisors of such county, on the first day of their then next annual meeting. Id.

*To audit claims against town.* The meeting of the board of auditors above provided for, is to be held on the Tuesday preceding the annual town meeting, and is simply for the purpose of examining the accounts and vouchers of the overseers of the poor, the commissioners of highways, and other officers who receive and disburse the town funds.

Besides this meeting, the board is to meet on the Thursday preceding the annual meeting of the board of supervisors of the county, for the purpose of auditing and allowing the accounts of all charges and claims payable by their respective towns. The first section of the act providing for this meeting is as follows :

The supervisor, town clerk, and justices of the peace, or any two of the said justices of the peace of the several towns in this State, shall constitute a board of town auditors, for the purpose of auditing and allowing the accounts of all charges and claims payable by their respective towns. Laws 1840, chap. 305.

*When to meet.* The said board of auditors shall meet for the purpose of auditing and allowing such accounts annually, in each town, at the place of holding the last town meeting, on the last Thursday preceding the annual meeting of the board of supervisors of the county. Id. § 2, as amended 1844, chap. 288.

The clerk of the board of supervisors usually sends a notice to the supervisor of each town, informing him of the day of the annual meeting of the board, and incloses a blank for the use of the auditors, to be filled up by them. It would be well for the supervisors, or some member of the board of town auditors, at least ten days before the meeting, to put up or publish notice of the time and place of their meeting, so that persons having claims to present may be present with their claims properly verified.

*Majority may act.* Where all the officers constituting the board of town auditors have met, a majority of them may decide, and their certificate will be sufficient, though one of the members has refused to sign it. *People v. Supervisors of Queens*, 1 Hill, 195.

*What claims they may allow.* Formerly the board of auditors were empowered to audit bills of the

supervisor, town clerk and justices, for the various services performed by them, but by the sixth section of chapter eight hundred and fifty-five of the laws of eighteen hundred and sixty-nine, it is provided that no board of town auditors in any town shall audit a service bill for any member of such town board. Accounts of members of the board of town auditors for services charged to such town, or to the county, shall be made out in detail and shall be verified, and shall be audited by the board of supervisors and charged to the proper account.

They may, however, audit the accounts of assessors, for their *per diem* in making their assessments.

The charges of overseers of the poor for their *per diem* allowance in performing their duty in regard to the relief and support of the poor, in regard to bastards, disorderly persons, jugglers, and any other duty required of them by law. (Their accounts for moneys received and disbursed are adjusted at the meeting on Tuesday preceding the annual town meetings heretofore mentioned.)

The charges of commissioners of highways for their *per diem* allowance, in the discharge of their duty. (Auditors at this meeting having nothing to do with the accounts of the commissioners for the disbursement of public money.)

The claims of inspectors of election for their services in attending elections.

Such other claims as are properly a town charge.

But no town officer shall be allowed any *per diem* compensation for services, unless expressly provided by law. (Laws 1845, chap. 180, § 23.)

*Town charges.* The following shall be deemed town charges :

1. The compensation of town officers for services rendered for their respective towns ;
2. The contingent expenses necessarily incurred for the use and benefit of the town ;
3. The moneys authorized to be raised by the vote of a town meeting, for any town purpose ; and,
4. Every sum directed by law to be raised for any town purpose. 1 R. S. 358.

Accounts for the compensation of town officers, and the contingent expenses of towns (except for moneys received and disbursed which are to be settled by the board of town auditors), shall be presented to the board of supervisors of the county. Id.

*Discretion in auditing.* Where no fixed and definite sum is prescribed as a compensation for services, the board have a discretion and may allow such sum as they may deem just. In auditing and allowing this class of accounts they act judicially, and no proceeding can be had against them, or against the town, for an erroneous determination. Such has been decided in reference to audits by a board of supervisors, and the town board is governed by analogous rules. *Chase v. County of Saratoga*, 33 Barb. 603.

When, however, the claim to be audited is for any matter the price of which is fixed by law, by custom, by authority, or by contract, with one having authority to contract on behalf of the town, the board have no discretion, but must settle or declare the amount according to such law, custom, authority

or contract. *People v. Supervisors of Lawrence*, 30 How. 173.

*Accounts of justices and constables.* In 1860 an act was passed conferring power on the board of town auditors to audit the accounts of the justices of the peace and constables for fees in criminal cases. In 1866 (ch. 832), the act was amended so as to read as given below. But in 1869 (ch. 855, § 6), it was provided that no board of town auditors in any town shall audit a service bill for any member of such town board, and that accounts of members of the board of town auditors for services charged to such town, or to the county, shall be made out in detail and shall be verified and shall be audited by the board of supervisors and charged to the proper account. This clearly nullifies the act of 1866, as given below, so far as justices are concerned, since they are members of the board of town auditors. The act however is applicable to constables. The act of 1866 reads as follows :

The board of town auditors of the several towns of this State, in addition to the authority now vested in such board, shall have the power and it shall be their duty at their annual meeting to audit the accounts of the justices of the peace and constables for fees in criminal cases, which are by law chargeable to any such town, and the amount thereof shall be included in their certificate and assessed by the board of supervisors of the county upon such town, in the same manner as other town charges are now assessed and collected.

In every case where any account of a justice of the peace or town constable for fees in criminal cases is audited by a board of town auditors of any town, any tax payer of said town may appeal from such auditing and allowance to the board of supervisors of the county, and such board of supervisors shall thereupon have power to audit and allow such bill; and in case any such account shall be disallowed, or the amount thereof reduced, the party presenting the same shall have the same right of appeal as above provided.

Such appeal shall be taken within five days after the allowance or disallowance of a bill by such town auditors, in whole or in part, by the service of a notice of appeal in writing on the town clerk, and said town clerk shall forthwith thereafter transmit said bill to the board of supervisors of said county to be audited and allowed by them, and said board of town auditors shall have no further jurisdiction over any such bill after the service of said notice of appeal.

If, after service of any notice of appeal, the bill is not transmitted to the board of supervisors as herein provided, no part thereof shall be levied or collected.

Such part of the town bills audited by the board of supervisors after such appeals as shall be allowed shall be assessed, levied and collected by the said board in the same manner as other town charges.

*Accounts of board of health.* It is also provided, that all expenses incurred by the several boards of health in the execution and performance of the duties imposed by chapter three hundred and twenty-four

of the laws of eighteen hundred and fifty, shall be a charge only on their respective cities, villages and towns, and shall be audited, levied, collected and paid in the same manner as other city, village and town charges are audited, levied, collected and paid. Laws 1868, chap. 761.

*Accounts to be verified.* No account shall be audited by any board of town auditors or supervisors, or superintendents of the poor, for any services or disbursements, unless such account shall be made out in items and accompanied with an affidavit attached to and to be filed with such account, made by the person presenting or claiming the same that the items of such account are correct, and that the disbursements and services charged therein, have been in fact made or rendered, or necessary to be made or rendered at that session of the board, and stating that no part thereof has been paid or satisfied; and the chairman of such board, or either of said superintendents, is hereby authorized to administer any oath required under this section. Laws 1845, chap. 180, as amended 1845, chap. 55. See Form 38.

*Accounts may be disallowed.* Nothing in the preceding section shall be construed to prevent any such board from disallowing any account in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof, as such board may think proper. Id.

Care should be taken in making out the accounts to state separately the *items*, and the affidavit should

be as to the correctness of the *items*, instead of the account.

*Certificate of town auditors.* The said board shall make a certificate to be signed by a majority of said board, specifying the name of the person in whose name the account is drawn, the nature of the demand, and the amount allowed; and shall cause a duplicate of said certificate to be made, one of which shall be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of the town, and the other shall be delivered to the supervisor of said town, to be by him laid before the board of supervisors of his county at their annual meeting. Laws 1840, chap. 305.

A certificate, purporting, in the body of it, to have been made by the board of auditors of the town, is sufficient, though the officers have merely signed their names without adding their official titles. *People v. Supervisors of Queens*, 1 Hill, 195.

It would be better to add the official title to the name of each member. See Form 39.

*Supervisors to raise amount audited.* The said board of supervisors are hereby authorized and directed to cause to be levied and raised upon said town, the amount specified in said certificate in the same manner as they are now directed to levy and raise other town charges. Laws 1840, chap. 305.

The certificate of the board of town auditors, regular on its face, is a sufficient authority for the board of supervisors to proceed and cause the amount

certified, to be levied on the town; and the supervisors have no discretion but to direct the amount specified in the certificate to be levied and raised upon the town. *People v. Supervisors of Queens County*, 1 Hill, 195.

*Abstract of town accounts.* It shall be the duty of boards of town auditors to make annually, brief abstracts of the names of all persons who have presented to said board accounts to be audited, the amounts claimed by each of the said persons, and the amounts finally audited by them respectively, and shall deliver said abstracts to the clerk of the board of supervisors, and the said clerk shall cause the same to be printed, with the statements required to be printed by him, by the fourteenth section of this act. Laws 1845, chap. 455, § 24. See Form 40.

*To audit accounts for repair of roads and bridges.* By the act of 1858 (chap. 103, as amended in 1865, chap. 442), entitled "An act to provide for the speedy construction and repair of roads and bridges where the same shall have been damaged or destroyed," it is provided that:

In case any road or roads, bridge or bridges shall be damaged or destroyed by the elements or otherwise, after any town meeting shall have been held, and since the fifteenth day of February, A. D. eighteen hundred and sixty-five, then and in that case, it shall be lawful for the commissioner or commissioners of highways, by and with the consent of the board of town auditors or a majority thereof of the

town or towns in which such road or roads, bridge or bridges shall be situated, to cause the same to be immediately repaired or rebuilt, although the expenditure of money required may exceed the sum now authorized to be raised by law upon the taxable property of the town or towns for such purposes; and the commissioners of highways shall present the proper vouchers for the expense thereof to the town auditors, at their next annual meeting, and the said bill shall be audited by them, and the amount audited thereon shall be collected in the same manner as amounts voted at town meetings as now required. The commissioners acting under this act, shall be entitled to receive, for each day's service actually rendered, two dollars.

The board of town auditors may be convened in special session by the supervisor, or, in his absence, the town clerk, upon the written request of any commissioner of highways, and the bills and expenses incurred in the erection or repairs of any such roads or bridges, may then be presented to and audited by such board of town auditors; and the supervisor and town clerk shall issue a certificate, to be subscribed by them, setting forth the amount so audited and allowed, and in whose favor, and the nature of the work done and material furnished; and such certificate shall bear interest from its date, and the amount thereof, with interest, shall be levied and collected in the same manner as other town expenses.

No account for services rendered or material furnished according to the provisions of this act, shall be allowed by such board unless the same shall be

accompanied by the affidavit of the party or parties performing such labor or furnishing such material, nor unless the commissioner or commissioners shall certify that such service has been actually performed, and such material was actually furnished, and that the same was so performed or furnished by the request of said commissioner or commissioners, and such board of auditors may require and take such other proof as they may deem proper to establish any claim for such labor and material, and the value therefor.

*To audit accounts for sheep killed by dogs.* The owner or owners of any sheep or lambs that may be killed or injured by dogs, may apply to any two fence viewers of the town, who shall inquire into the matter and examine witnesses in relation thereto, for which purpose, either of them shall have power to administer oaths, and if they shall be satisfied that the same were killed by dogs and in no other way, they shall certify such fact, the number of such sheep killed and the number injured, the value of such sheep killed or injured immediately previous to such killing or injury, together with the value of the sheep after being so killed or injured, together with the amount of their fees. Laws 1864, chap. 197, § 3.

Such certificate shall be presented to the board of town auditors at their annual meeting for auditing town accounts, who shall have the same power in auditing or allowing the same as in regard to town accounts; and if such board shall be satisfied by the oath of the person claiming such damages, that such claimant has not been able to discover the owner or

possessor of the dog or dogs by which such damage was done, or that he has failed to recover his damages of such owner or possessor, they shall give an order on the supervisor of the town for the amount which they shall allow, who shall pay such order out of the funds arising from the provisions of this act. Laws 1864, chap. 197, § 4.

If, after receiving the amount of such damages from the supervisor, the owner of the sheep so killed or hurt shall receive or recover the value thereof from the owner or possessor of the dog or dogs doing said damage, he shall refund and repay to the supervisor the sum so recovered, for which it shall be the duty of the supervisor of the town to bring an action against such person, in case of his refusal, in his name of office; which sum when so received and recovered shall be returned to said dog fund. Id. § 5.

The supervisor is hereby required to account to the town auditors for moneys received and disbursed by him in pursuance of this act. Id. § 6.

Whenever the board of supervisors of any county of this State shall, by resolution, declare that the provisions of this act shall be extended and made applicable to said county, the provisions of this act shall thereafter be applicable to such county. Id. § 7.

See acts of 1874, to authorize the election of town auditors in the town of *Saratoga Springs*. Laws of 1874, chapter 544, and in the several towns of *Westchester county*. Id. ch. 70.

## LAWS OF 1875.

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### CHAP. 166.

**AN ACT** to amend chapter four hundred and seventy six of the laws of eighteen hundred and fifty-nine, entitled “An act to supply vacancies in the office of justices of the peace of the several towns of this State.”

PASSED April 24, 1875; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

**SECTION 1.** Section one of chapter four hundred and seventy-six of the laws of eighteen hundred and fifty-nine, entitled “An act to supply vacancies in the office of justices of the peace of the several towns of this State,” is hereby amended so as to read as follows :

§ 1. Whenever a vacancy shall occur in the office of justice of the peace of any town in this State, the supervisor, town clerk, and remaining justices of the peace, or a majority of such officers, are hereby authorized, by warrant under their hands and seals, to appoint a suitable person to fill said vacancy, and the person so appointed shall hold said office until the next regular annual town meeting in said town, unless the said appointment shall have been made to fill the vacancy of an officer whose term of office would have expired on the thirty-first day of December next succeeding such appointment; in which case the term of office of the person so appointed shall expire on the thirty-first day of December next succeed-

ing such appointment. And any person so appointed may at once qualify and enter upon the discharge of the duties of his office.

§ 2. This act shall take effect immediately.

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## CHAP. 180.

AN ACT creating a board of town auditors in the several towns of this State, and to prescribe their powers and duties.

PASSED April 29, 1875; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. In addition to the officers now authorized by law to be elected at town meetings, there shall be chosen in the manner hereinafter provided, in each of the towns of this State, at the next annual town meeting held after the passage of this act, and annually thereafter, three town auditors, whose term of office shall continue during one year after their election, and who shall form the board of town auditors of the town for which they are elected.

§ 2. All the powers conferred by law upon boards of town auditors, and all duties required by law to be performed by such boards, are conferred upon and shall be required of the town auditors elected or appointed under and pursuant to this act. All bills and claims must be presented on the first day of their session.

§ 3. Such town auditors shall be voted for upon the same ballots as other town officers, and the ballots received and canvassed, and their election certified, excepting, however, that only two of such auditors shall be voted for on each ballot, and the two persons having the highest number of votes shall be declared elected as two of such auditors, and the person having the next highest

number of votes shall be appointed by the presiding officers of such town meeting, or in case the election is held in election districts, by the supervisor and justice of the peace of such town, or a majority of them, as the other of such auditors.

§ 4. No person shall be elected or appointed as such town auditor, or shall hold office as such, unless he is a freeholder of the town for which he shall be elected or appointed, and no person so elected or appointed shall hold any other office in such town during the term for which he is elected or appointed; and if he shall accept an election or appointment to any other office in such town, he shall immediately cease to be a town auditor, and the vacancy in his office shall be supplied in the manner hereinafter required.

§ 5. Each of such town auditors shall be entitled to and shall receive for his services three dollars per day for each day, not exceeding three, actually employed by him in the performance of the duties of his office. In case of any vacancy occurring in the board of town auditors, by the death or removal from the town of any or either of such auditors, or by his neglect or refusal to accept such office, the supervisor of the town in which such vacancy occurs may appoint some suitable and competent person to fill such vacancy until the next annual town meeting thereafter.

§ 6. This act shall take effect immediately.

## CHAP. 197.

**AN ACT** to amend chapter three hundred and forty-five of the laws of eighteen hundred and seventy-four, entitled "An act in regard to publishing the account of incorporated villages in this State."

PASSED April 29, 1875; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section one of chapter three hundred and forty-five of the laws of eighteen hundred and seventy-four, entitled "An act in regard to publishing the account of incorporated villages in this State," is hereby amended so as to read as follows : -

§ 1. It shall be the duty of the board of trustees of each of the incorporated villages of this State to cause to be published, once in each year and twenty days next before the annual meeting, in at least one public newspaper printed in such village, or in a public newspaper that is, to all intents and purposes, a village newspaper of more than one village, and that has more than one publication office, one of which is in such incorporated village, a full and detailed account of all money received by them or the treasurer of said village for the account and use thereof, and of all money expended therefor, giving the items of expenditures in full. Should there be no paper published in said village, they shall be required to publish the same by notice to the tax payers, by posting in five public places in said incorporated limits.

§ 2. This act shall take effect immediately.

## CHAP. 324.

AN ACT further to amend chapter six hundred and ninety-two of the laws of eighteen hundred and sixty-six, entitled "An act to amend an act fixing the fees of justices of the peace and constables in civil and criminal cases, and the fees of jurors and witnesses in justices' courts, and for other purposes."

PASSED May 14, 1875; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section eight of chapter six hundred and ninety-two of the laws of eighteen hundred and sixty-six, entitled "An act to amend an act fixing the fees of justices of the peace and constables in civil and criminal cases, and the fees of jurors and witnesses in justices' courts, and for other purposes," is hereby amended so as to read as follows :

§ 8. Constables shall hereafter be allowed the fees hereinafter stated for the following services in criminal cases : For serving a warrant, seventy-five cents ; for every mile traveled, going and returning, ten cents ; for taking a defendant into custody on a mittimus, twenty-five cents ; for every mile traveled in taking a prisoner to jail, going and returning, ten cents ; for serving every subpoena, twenty-five cents ; for every mile traveled in serving each subpoena, going and returning, five cents ; for notifying a complainant, twenty-five cents ; for every mile traveled in notifying a complainant, five cents, going and returning ; for taking charge of a jury during their deliberations, fifty cents ; for attending any court, pursuant to a notice from the sheriff for that purpose, two dollars for each day, and five cents a mile for each mile traveled in going to and returning from such court ; which fees shall be chargeable to the county, and shall be paid by the

treasurer thereof on the production of the certificate of the clerk, specifying the number of days and distance traveled.

§ 2. This act shall take effect immediately.

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### CHAP. 328.

AN ACT to authorize the payment, in whole or in part, of the bonded indebtedness of any of the towns in this State created in aid of any railroad therein, and to prescribe the mode in which the people thereof shall determine the time and amount of such payment.

PASSED May 14, 1875; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Upon the application in writing of at least twelve citizens, tax payers of any town in this State, addressed to the supervisor of such town, asking for the payment, in whole or in part, of the bonded indebtedness of such town created in aid of any railroad therein, specifying the amount of such indebtedness to be paid, and how much thereof shall be paid annually, and asking also for a vote of the People of such town upon the question, the time and the amount of such payment, the said supervisor shall, at the next annual town meeting to be held in such town, submit such question to the qualified voters of such town, and shall take the votes thereof in the manner following, to-wit: The said supervisor shall have prepared a suitable book, in which shall be transcribed a copy of the aforesaid application, underwritten with the names of the signers thereof, and shall open the same at the time of the opening of the polls of such town meeting, for the signatures of the qualified voters of such town, by reading aloud to the People the said application

and the names of its signers. The said voters, together with other individuals paying taxes in said town, who shall favor such application, may, during the time the polls of such town meeting are open, subscribe in such book such transcribed application, or may authorize the clerk of such town to subscribe the same for him or her. And any solvent moneyed, manufacturing or other corporation or company formed under the laws of this State and being assessed on real or personal property in such town, shall have all the rights and privileges under this act, so far as property representation is concerned, as other tax payers, to be exercised by its chief financial officer.

§ 2. Immediately after the close of the polls at such town meeting, the said supervisor shall affix his certificate next succeeding the last named subscribed in such book, to the effect that the persons whose names are subscribed in such book are qualified voters of such town, or tax payers therein, and assented to the proposition submitted in the said application at such town meeting, and shall forthwith, and within five days after such town meeting, transmit the said books so completed to the county judge of his county ; and it shall be the duty of said judge forthwith, and within ten days thereafter, to proceed to take proof as to the relative number and assessed property represented by such voters ; and if it shall appear satisfactorily to him that the persons who had so signed said application, and such other tax payers of said town as may then and there appear before him and express a desire to subscribe the same, do represent a majority of the tax payers of said town, as shown by the last preceding tax list or assessment roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine and cause the same to be entered of record, and shall forthwith certify the same to the board of supervisors of his county, to whom he shall also transmit such book, with its contents.

§ 3. It shall thereupon be the duty of the said supervisors, in accordance with the terms and request of such application, to cause to be assessed, levied and collected in such town as other taxes in such town are assessed, levied and collected, in each year, as the same is designated in such application, such sum or sums as shall be sufficient to pay off and discharge the said bonded indebtedness, either at one time and by one assessment, or by installments of yearly assessments and payments, as may be designated in such application.

§ 4. The money so assessed, levied and collected shall be sacredly applied to the payment of the bonds of such town so given in aid of railroads, as designated in such application, and to no other purpose whatever; except that in case there shall not be of such bonds as are then due and payable sufficient in amount to exhaust the whole sum so collected, and the holders and owners of such other bonds as may not then have matured, shall not be willing to accept payment thereof, the said supervisor shall cause the residue of said money so collected, after paying such bonds as he may be able to retire, to be invested in such State, county, town, city or village bonds as may have been issued in pursuance of the laws of this State, or in United States bonds, to be deposited with the treasurer of said county as a sinking fund, for the redemption and payment of the bonds of such town created in aid of any railroad therein, and the avails of such sinking fund shall be sacredly applied for the payment and redemption of the bonds of such town as the same become due.

§ 5. This act shall take effect immediately.

## CHAP. 331.

AN ACT to relieve premises of one person erroneously assessed and taxed in and with the premises of another.

PASSED May 14, 1875; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. When the premises of one person shall have been wrongfully assessed and taxed in and with the premises of another, the person aggrieved thereby may, upon application to the county court of the county in which the property is situated, on petition duly verified, and on eight days' notice to the assessors of the town in which the premises are situated, and to the party whose premises are included in such wrongful assessment, his executors or administrators, have his taxes or assessments apportioned by such county court, at a regular term thereof, or at chambers, in such manner as to the said court may seem just and proper.

§ 2. The said county court shall ascertain the boundaries, the premises and the rate of taxation in said town, and shall fix and specify the amount of said tax or assessment properly chargeable to the petitioner's property, and to the other party chargeable therewith; and the collector or receiver of taxes of the town in which the premises are situated, upon receiving a certified copy of said order, shall forthwith change the tax and assessment books of said town to conform to the apportionment made by said order.

§ 3. The said collector or receiver shall, upon receiving the amount so apportioned upon the premises of said petitioner, receipt for the same in full discharge of the lien thereof upon the property of said petitioner.

§ 4. This act shall take effect immediately.

## CHAP. 421.

AN ACT to authorize towns, cities and villages to pay their bonds, issued for railroad purposes, by exchanging therefor their railroad stock or bonds, and to exchange their stock of any railroad corporation for the bonds of such corporation.

PASSED May 22, 1875 ; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. It shall be lawful for any town, city or village to exchange the bonds and stock of any railroad corporation for and in payment of the bonds of any such town, city or village heretofore issued in aid of any such railroad corporation, and it shall be lawful for any town, city or village to exchange the stock of any railroad corporation for the bonds of such corporation ; and such exchange may be made by the officers of such town, city or village having the lawful charge and custody of such railroad stock and bonds, but the same shall not be thus exchanged for less than the par value thereof ; and when any such exchange shall be made, report thereof shall be made by the officers making the same, to the then next meeting of the board of auditors of their town, the common council of their city, or the board of trustees of their village ; and the town, city or village bonds obtained by such exchange shall thereupon be canceled.

§ 2. This act shall take effect immediately.

## CHAP. 474.

AN ACT to amend chapter four hundred and fifty-five of the laws of eighteen hundred and forty-seven, entitled "An act to amend an act entitled 'An act to reduce the number of town officers, and town and county expenses, and to prevent abuses in auditing town and county accounts,' " passed May tenth, eighteen hundred and forty-five.

PASSED May 28, 1875; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section sixteen of chapter four hundred and fifty-five of the laws of eighteen hundred and forty-seven, entitled "An act to amend an act entitled 'An act to reduce the number of town officers and town and county expenses, and to prevent abuses in auditing town and county accounts,' passed May tenth, eighteen hundred and forty-five," is hereby amended so as to read as follows :

§ 16. Town collectors shall be entitled to collect five per cent fees for all unpaid taxes under the thirtieth section of the act hereby amended, and whenever any such collector shall make return to the county treasurer for any unpaid taxes, he shall add to the several sums so returned by him five per cent, which shall go to the credit of the county, and be collected with said unpaid taxes; and such collector shall be entitled to receive from the county treasury, and be paid by the treasurer, two per cent as fees for all taxes so returned by him. The town collectors from the county of Kings, in addition to the percentage and interest authorized by sections five and six of chapter one hundred and fifty-four of the laws of eighteen hundred and forty-one, shall add the amount of their fees, which shall go to the credit of the respective towns.

§ 2. The provisions of section sixteen of said act, as

amended under section one, are hereby made applicable to the county of Kings, and section twenty-six of said act is repealed in so far as it may conflict with such application.

§ 3. All other acts and parts of acts inconsistent with this act are hereby repealed.

§ 4. This act shall take effect immediately.

## APPENDIX OF FORMS.

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### No. 1.

#### OATH OF ASSESSOR.

*See ante, page 3.*

ALBANY COUNTY, ss :

I, James Joslyn, of the town of Watervliet, in said county, having been elected assessor of said town, do solemnly swear (or affirm), that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of assessor, as aforesaid, according to the best of my ability.

JAMES JOSLYN.

#### CERTIFICATE OF JUSTICE.

COUNTY OF ALBANY, }  
Town of Watervliet. } ss :

I, Theodore C. Richmond, justice of the peace in and for the town of Watervliet, in said county (or town clerk of the town of Watervliet, in said county), do hereby certify, that on the 12th day of November, 1867, personally appeared before me James Joslyn, of said town, who then and there duly took and subscribed the foregoing oath.

T. R.,  
*Justice of Peace.*

## No. 2.

## ORDER APPOINTING ASSESSOR TO FILL VACANCY.

*See ante, page 4.*

COUNTY OF RENSSELAER, } ss:  
 Town of Pittstown.

Whereas, a vacancy has occurred in the office of assessor of the town of Pittstown, by reason of the death (*or, as the case may be*), of George Holmes, heretofore elected to said office from said town, —

Now, therefore, by virtue of the power vested in us by the statute, in such case made and provided, we, the undersigned, three of the justices of the peace of said town, do hereby, in order to fill such vacancy, nominate and appoint Charles Adams, assessor of said town, to hold his said office until the next succeeding annual town meeting of said town, as by law provided.

In witness whereof we have hereto set our hands this tenth day of July, 1869.

Signatures.

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## No. 3.

## DECISION OF FENCE VIEWERS.

*See ante, pages 9 and 12.*

COUNTY OF RENSSELAER, } ss:  
 Town of Pittstown.

A dispute having arisen between John Doe and Richard Roe, owners of adjoining lands in said town, concerning the proportion or particular part of the division fence running (*describe the fence*) to be maintained by each, and the undersigned fence viewers of said town having been selected to settle such dispute, according to the statute in such case

made and provided, and having examined the premises and heard the allegations of the said parties, we do hereby determine and decide, that the said John Doe shall maintain all that portion of said fence being between the highway on the north side of said adjoining lands and a point ten chains and three links south thereof on said boundary line; and that the said Richard Roe shall maintain all that portion of said fence between the last mentioned point and the south boundary of said adjoining lands. And we do further determine and decide, that the said John Doe shall pay one-third of the costs and expense of this proceeding, to wit, the sum of three dollars; and that the said Richard Roe shall pay the remaining two-thirds of such costs and expense, to wit, the sum of six dollars.

In witness whereof we have hereto set our hands this tenth day of July, 1869.

Signatures.

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No. 4.

SUBPŒNA OF FENCE VIEWERS.

*See ante, page 11.*

*The People of the State of New York,*  
*To —:*

We, fence viewers of the town of Pittstown in the county of Rensselaer, command you, that (all and singular, business and excuses being laid aside) you appear and attend before us, at the house of John Doe in said town, on the tenth day of July, 1869, at ten o'clock in the forenoon, to be examined as a witness, there and then, touching (*insert object*); and for a failure to attend you will be deemed guilty of contempt, and will be proceeded against in the manner provided by law.

Dated.

Signed.

## No. 5.

## FENCE VIEWERS' CERTIFICATE OF SHEEP KILLED BY DOGS.

*See ante, page 19.*

RENSSELAER COUNTY, } ss :  
 Town of Brunswick. }

William E. Smith, of said town, having applied to us, two fence viewers of said town, to appraise the value of certain sheep alleged to have been killed by dogs, and the amount of damage sustained by him, pursuant to the statute, and having this day inquired into the matter and viewed the sheep killed, and examined witnesses in relation thereto, we do hereby certify and find, that the said sheep were hurt and killed by dogs only, and in no other way, and that there were ten sheep killed, of the value of four dollars each, and that the owner, William E. Smith, has sustained damage to the amount of twenty-five dollars.

In witness whereof we have hereto set our hands the ninth day of October, 1869.

Signatures.

## No. 6.

## ORDER DIVIDING TOWN INTO ELECTION DISTRICTS.

*See ante, page 22.*

RENSSELAER COUNTY, } ss :  
 Town of Grafton. }

We, the undersigned, supervisor, town clerk and assessors of the town of Grafton, in the county of Rensselaer, having met at the town clerk's office in said town, on the first Tuesday in September, 1868, for the purpose of dividing said

town into election districts, and a majority of said officers being present, did then and there divide said town into *two election* districts, which districts shall be known as election districts Nos. 1 and 2. Said District No. 1, shall comprise and consist of all that part of said town lying and being within the following boundaries, viz.: (*describe each district carefully by known boundaries.*) Said District No. 2 shall comprise, etc.

Dated this 14th day of September, 1866.

Signatures.

#### ALTERING AN ELECTION DISTRICT.

We, the undersigned, supervisor, town clerk and assessors of the town of Grafton, in the county of Rensselaer, having met at the town clerk's office in said town, on the first Monday of October, as by statute required, and a majority of said officers being present, did then and there decide and determine that the following alterations in the existing election districts in said town are necessary and expedient, viz.:

Election district No. 1, in said town, is hereby altered so as to comprehend and include all that part of said town bounded and described as follows, to wit (*insert boundaries as before*). Election district No. 2, etc.

Dated this third day of October, 1868.

Signatures.

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#### No. 7.

#### NOTICE OF AN ELECTION.

*See ante, page 23.*

Town of <sup>COUNTY,</sup> } ss:

We, the undersigned, composing the board of town officers of said town, do hereby give notice that the ensuing general



received five hundred and fifteen; P. B. received five hundred and forty, etc.

Dated

18 .

A. W., }  
L. R., } *Inspectors of*  
M. N., } *Election.*

No. 9.

*For governor.*

(*See ante, page 25.*)

We, the board of inspectors of election in and for the  
election district of the town of (or, of  
the ward of the city of ), in the county  
of , do certify that the following is a correct state-  
ment of the result of a general election held in said district  
on the day of November, one thousand eight hun-  
dred and , viz.:

That the whole number of votes given for the office of  
governor was four hundred and fifty; of which J. D. received  
two hundred and ten; B. T. received one hundred and  
twenty; I. J. received ninety; C. P. received seventeen;  
A. D. received eleven; P. H. received one, and J. G. received  
one.

Dated

, in the year 18 .

A. B., }  
C. D., } *Inspectors of*  
E. F., } *Election.*

No. 10.

*For judicial officers.*

(*See ante, page 25.*)

We, the undersigned, composing the board of inspectors  
of election in and for the election district of the  
town of (or, of the ward of the city  
of ), in the county of , do certify that

the following is a correct statement of the result of a general election held in said district on the                      day of November, one thousand eight hundred and                      (or at the election held in said district, etc.), viz. :

That the whole number of votes given in said district for the office of judge of the court of appeals was six thousand, of which L. M. received eight hundred ; J. S. received seven hundred (*and so on through the entire list*) ;

That the number of votes given in said district for the office of justice of the supreme court was, etc. (*proceeding as above*).

Dated.

Signature.

### No. 11.

#### STATEMENT OF THE BOARD OF COUNTY CANVASSERS.

*See ante, page 27.*

Statement in relation to governor, lieutenant-governor, judges of the court of appeals, justices of the supreme court, clerk of the court of appeals, secretary of State, comptroller, treasurer, attorney-general, State engineer and surveyor, canal commissioner, inspectors of State prisons, senators and representatives in congress.

The board of county canvassers of the county of Rensselaer, having met at the office of the clerk of the said county, on the                      day of November, 18    , to canvass and estimate the votes given in the several election districts of said county, at the general election, held on the                      day of                      , in the year aforesaid, do certify as follows, to wit: That it appears, on such estimate and canvass, that the whole number of votes given for governor, was fifteen thousand one hundred and ten ; of which P. D. received seven thousand and one ; A. R. received six thousand and twelve ; J. D. received one thousand two hundred and seventeen, and J. F. received eight hundred and seventy-two votes.

That the whole number of votes given for lieutenant-governor was fifteen thousand, of which (*etc., as before*).

That the whole number of votes given for senator (*or, senators, as the case may be*), was, etc.

(*If more than one judge of the court of appeals, justice of the supreme court, canal commissioner, or inspector of State prisons, is to be elected, give the number of years assigned to each candidate, as contained in the aggregate of the canvass of the several election districts.*)

That the whole number of votes given for canal commissioner (*or, canal commissioners, as the case may be*), was, etc.

That the whole number of votes given for a representative in congress, was, etc.

Dated the            day of            , in the year 18    .

A. B., *Chairman.*

C. D., *Clerk of the County and Secretary.*

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## No. 12.

### *Statement in relation to county officers*

(*See ante, page 27.*)

The statement may be in the same form as the preceding, varying only as to the description of officers in the caption or heading, and then proceed as follows:

That the whole number of votes given for county judge, was, etc.

That the whole number of votes given for district attorney, etc.

That the whole number of votes given for sheriff, etc.

That the whole number of votes given for county clerk, etc.

That the whole number of votes given for coroners, etc.

## No. 13.

*Certificate of election of county officers.**(See ante, page 27.)*

The board of county canvassers of the county of \_\_\_\_\_, having canvassed and estimated the votes given in the several election districts of the said county, at a general election, held on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_, do hereby certify, determine and declare, that J. D., by the greatest number of votes, was duly elected county judge of said county.

That P. Q., by the greatest number of votes, was duly elected district attorney of said county.

That A. S., by the greatest number of votes was duly elected sheriff of said county.

That A. W., by the greatest number of votes, was duly elected county clerk of said county.

And that N. F., R. M. and E. R., by the greatest number of votes, were duly elected coroners of the said county.

Dated the \_\_\_\_\_ day of November, in the year 18 \_\_.

A. B., *Chairman.*

C. D., *County Clerk and Secretary.*

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No. 14.*Statement by board of county canvassers.**(See ante, page 27.)*

Statement in relation to members of assembly:

The board of county canvassers of the county of \_\_\_\_\_, having met at the office of the clerk of said county on the \_\_\_\_\_ day of November, 18 \_\_, to canvass and estimate the votes given in the several election districts in each of the

assembly districts of said county, at the general election, held on the            day of            , in the year aforesaid, do certify as follows, to wit :

That it appears on such estimate and canvass, that the whole number of votes given for member of assembly in the first assembly district of said county, was nine thousand four hundred and fifty; of which W. S. received four thousand and eight hundred; E. F. received four thousand four hundred and fifty; and J. D. received two hundred votes.

That the whole number of votes given for member of assembly, in the second assembly district of said county, was nine thousand and fifteen; of which P. N. received five thousand and ten; G. P. received four thousand; J. T. received three, and R. H. received two votes.

*(Proceed in this manner with the subsequent districts in the county, where there may be more than two, until the result in each assembly district is given. Where the county does not elect but one member of assembly, the statement will be varied to conform to the fact.)*

---

### No. 15.

#### *Certificate of the election of members of assembly.*

*(See ante, page 27.)*

The board of county canvassers of the county of            , having canvassed and estimated the votes given in the several election districts in each of the assembly districts of the said county, at a general election held on the            day of            , 18    , do hereby certify, determine and declare, that J. S., by the greatest number of votes was duly elected member of assembly in and for the first assembly district in said county.

That C. D., by the greatest number of votes, was duly elected member of assembly in and for the second assembly district in said county.

Dated the                      day of November, 18   .

A. B   *Chairman.*

C. D., *County Clerk and Secretary.*





true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor; and also that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full and true value thereof, according to our best judgment and belief.

A. B., }  
C. D., } *Assessors of the town*  
E. F., } *of*

I, \_\_\_\_\_ one of the justices of the peace in and for the town of \_\_\_\_\_ do certify, that the assessors above named, appeared before me on the \_\_\_\_\_ day of \_\_\_\_\_ and did severally make and subscribe the foregoing oath.  
\_\_\_\_\_, *Justice.*

### No. 19.

#### BOND OF COLLECTOR.

*See ante, page 134.*

Know all men by these presents, that we, A. B., C. D. and E. F., of the town of Bethlehem, in the county of Albany, and State of New York, are held and firmly bound unto G. H., supervisor of said town, in the penal sum of (*insert double the amount of the taxes*), to be paid to the said supervisor, or to his successor in office. For which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seal, and dated \_\_\_\_\_, 18 \_\_\_\_\_,  
\_\_\_\_\_, *Collector.*

The condition of this obligation is such, that, whereas, the said A. B., as collector of the town of Bethlehem, has received

the assessment roll of said town, with the warrants for the collection of the taxes therein named, the total amount of which being *ten thousand* dollars; now, therefore, if the said A. B. shall faithfully execute the duties of collector, then this obligation is to be void, otherwise in force.

Witness.

Signature and seal.

COUNTY OF ALBANY, ss:

C. D. and E. F., of the town of Bethlehem, being severally duly sworn, each for himself says, that he is a householder in said town and worth the sum of twenty thousand dollars over and above his debts and liabilities.

Sworn, etc.

Signature.

COUNTY OF ALBANY, ss:

On this                      day of                      personally appeared before me A. B., C. D. and E. F., to me known to be the persons mentioned in and who executed the above instrument, and severally acknowledged that they executed the same.

Signed.

---

No. 20.

#### ORDER APPOINTING COLLECTOR.

*See ante, page 135.*

Whereas, a vacancy has occurred in the office of collector of taxes of the town of Hoosick, by reason of the death (*refusal to serve, or, as the case may be*) of G. H., heretofore elected to said office from said town, —

Now, therefore, by virtue of the power vested in us by statute, in such case made and provided, we, the undersigned, supervisor and two justices of said town, do hereby, in order to fill the vacancy, appoint C. A. collector of said town, to

hold said office until the next succeeding annual town meeting of said town, as provided by law.

In witness whereof we have hereto set our hands this tenth day of July, 1869.

Signatures.

No. 21.

WARRANT TO COLLECTOR.

*See ante, page 137.*

STATE OF NEW YORK, } ss:  
*Rensselaer County.*

*The People of the State of New York to* Collector  
*of the Town of* in said County, GREETING :

You are hereby commanded to receive and collect from the several persons named in the assessment roll, hereunto annexed and herewith delivered to you, the several sums mentioned in the last columns thereof, opposite to their respective names. And on all sums of taxes received or collected within thirty days after giving the notices required by the twenty-ninth section of the act of May 10, 1845, chapter 180, you are directed to receive and collect, in addition to the taxes named in said assessment roll, one cent on every dollar of tax, and one cent on every sum less than one dollar of tax, for your fee for collecting the same. And on all sums of taxes remaining unpaid after the expiration of thirty days from the posting of the notices specified in said act, you are directed to receive and collect, in addition to the said tax so remaining unpaid, five cents on every dollar, for your fees for collecting the same. And you are hereby directed, out of the moneys so collected, to pay on or before the day of next :

\$ 1. To the commissioners of highways of said town the sum of dollars and cents, levied and

assessed on said town, for the support of highways and bridges.

\$            2. To the overseers of the poor of said town, the sum of            dollars and            cents, for moneys levied and assessed on said town, for the support of the town poor.

\$            3. To the supervisor of said town, the sum of            dollars and            cents, for town charges assessed on said town.

\$            4. To the treasurer of said county, the sum of            dollars and            cents, for and on account of a State tax levied on said town.

\$            5. To the treasurer of said county, the sum of            dollars and            cents, for and on account of the military tax levied on said roll.

\$            6. To the treasurer of said county, the sum of            dollars and            cents, being the remainder of the moneys so to be collected.

You will proceed as directed by the 29th and 30th sections of the act, entitled "An act to reduce the number of town officers and town and county expenses, and to prevent abuses in auditing town and county accounts," passed May 10, 1845.

And in case any person named in said assessment roll shall neglect or refuse to pay his taxes, or the fees for collecting same (after giving the notices and awaiting the time specified in said act), you are hereby authorized to levy and collect the said taxes and fees as aforesaid, by distress and sale of the goods and chattels of such person, together with the costs and charges of such distress and sale; and for so doing this shall be your sufficient warrant.

Given under the hands and seals of the undersigned, the board of supervisors of Rensselaer county, at Troy, the  
day of            in the year of our Lord one thousand eight hundred and sixty            .

Signatures and seals.

## No. 22.

## COLLECTOR'S NOTICE OF RECEIPT OF WARRANT.

*See ante, page 142.*

Notice is hereby given to the taxable inhabitants of the town of \_\_\_\_\_ (or, of the \_\_\_\_\_ ward, in the city of \_\_\_\_\_), that I, the undersigned, collector of taxes in and for said town (or ward), have received the warrant for the collection of the taxes for the present year; and that I will attend at \_\_\_\_\_, in said town, on (*naming three days*), of each week, for thirty days from the date hereof, from nine o'clock in the forenoon until four o'clock in the afternoon, for the purpose of receiving payment of taxes.

Dated \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
A. G., Collector.

## No. 23.

## NOTICE OF LEVY AND SALE BY COLLECTOR.

*See ante, page 148.*

By virtue of a collector's warrant, I have levied upon and taken the following goods and chattels of G. H. (*or, in the possession of G. H., as the case may be*), viz.: (*insert list of articles*); which I shall sell at public auction, at \_\_\_\_\_ in said town of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.  
A. B., Collector.

## AFFIDAVIT THAT NOTICE OF SALE HAS BEEN GIVEN.

*See ante, page 148.*

COUNTY, ss.

A. B., of the town of \_\_\_\_\_ in the county aforesaid,  
being duly sworn, says that on the \_\_\_\_\_ day of \_\_\_\_\_,



18 , he demanded of the president of the company, the sum of , it being the amount of the tax assessed upon said company; and that the president of said company did then and hath since refused to pay any part of the said tax assessed on said company — and further, that said company has no personal property from which said tax could be levied.

A. B.

Subscribed and sworn before me, }  
 this day of , 18 . }

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 No. 26.

## OATH OF TOWN CLERK.

*See ante, page 164.*

RENSSELAER COUNTY, ss :

I, E. D., of the town of Pittstown in said county, having been elected clerk of said town, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of town clerk as aforesaid, according to the best of my ability.

Sworn, etc.

E. D.

*(Add certificate etc., as in Form No. 1.)*


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 No. 27.

## ORDER FILLING VACANCY IN OFFICE OF TOWN CLERK.

*See ante, page 166.*

COUNTY OF RENSSELAER, }  
 Town of Hoosick. }

Whereas, a vacancy has occurred in the office of town clerk of the town of Hoosick, by reason of the death (*or as the case may be*) of George Jones, heretofore elected to said office by said town :

Now, therefore, by virtue of the power vested in us by the statute in such case made and provided, we, the undersigned three justices of the peace of said town, do hereby

in order to fill such vacancy, nominate and appoint Charles Adams, town clerk of said town, to hold his office until the next succeeding annual town meeting of said town, as by law provided.

In witness whereof, we have hereto set our hands this third day of July, 1869.

Signature.

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No. 28.

COMPLAINT TO COMPEL DELIVERY OF BOOKS.

*See ante, page 183.*

STATE OF NEW YORK, }  
County of Rensselaer. }

*To the Hon. C. R. Ingalls, Justice of the Supreme Court.*

A. B., of said county, being duly sworn, makes complaint against C. D., late town clerk of the town of Pittstown, in said county, and says, that the deponent was duly elected town clerk of said town of Pittstown, at an annual town meeting of such town, held on the sixth day of March, 1868; that he has taken and filed the oath prescribed by law.

That by virtue of such election he is successor to the said C. D., late town clerk as aforesaid; that he has required and demanded that the said C. D. deliver over to him, as such successor, all the records, books and papers in his possession, or under his control, belonging or appertaining to the said office of town clerk.

And this deponent further alleges, that the said C. D. has refused and neglected so to deliver such records, books and papers or any part thereof; and that, as this deponent is informed and believes, said C. D. has in his possession or under his control, the following records, books and papers, appertaining to the said office of town clerk (*insert description if known, if not say so*), and that he unjustly and unlawfully withholds the same from this deponent.

Sworn, etc.

A. B.

## No. 29.

## ORDER THEREUPON GRANTED.

*See ante, page 183.*

STATE OF NEW YORK, }  
 County of Rensselaer. } ss :

Complaint having been made to me, the undersigned, as follows, to wit: (*insert a copy of the complaint*), and being satisfied by the oath of the said complainant (*add "and other testimony offered," if any such was offered*), that the said books and papers (*or either, according to the fact*) are withheld as aforesaid, I, therefore, pursuant to the provisions of the statute in such case made and provided, do hereby order and direct the said C. D., the person so refusing, to show cause before me at my office in the city of Troy, in said county, on the tenth day of May instant, at 10 o'clock in the forenoon, why he should not be compelled to deliver the same books and papers (*or either, as the case may be*).

Dated, etc.

Signature.

## No. 30.

## AFFIDAVIT OF DELIVERY.

*See ante, page 183.*

STATE OF NEW YORK, }  
 County of Rensselaer. } ss :

C. D., of said county, being duly sworn, says, that he is the person mentioned and described as late town clerk of the town of Pittstown, in said county, in a certain affidavit and complaint made by one A. B. before the Hon. C. R. Ingalls, Justice of the Supreme Court, on the tenth day of May, 1867, and that he has truly delivered over to his successor in said office of town clerk, all the books, records and papers in his custody or appertaining to his said office, within his knowledge.

Sworn, etc.

C. D.

## No. 31.

## WARRANT TO COMMIT THE PERSON WITHHOLDING.

*See ante, page 183.*

*The People of the State of New York, to the Sheriff of the County of Rensselaer :*

Complaint having been made to the undersigned, as follows, to wit: (*Insert a copy of the complaint.*) Whereupon, pursuant to the provisions of the statute, being satisfied by the oath of the said complainant (*add, and other testimony offered, if any such was offered*), that the said books and papers (*or either, according to the fact*) were withheld as aforesaid, the undersigned granted an order, directing the said C. D., the person so refusing, to show cause before the undersigned, at, etc. (*as in the order*), why he should not be compelled to deliver the same books and papers (*or either, as the case may be*), at which place and time so appointed (*or if at any other time to which the matter was adjourned, so state*), upon due proof being made of the service of the said order, the undersigned proceeded to inquire into the circumstances, and the said C. D. having omitted to make the oath prescribed by the statute in such case made and provided, and it appearing to the undersigned that the said books and papers (*or either of them, to be described*) are withheld as aforesaid,— \*

Now, therefore, you are commanded that you take the said C. D., if he may be found in your bailiwick, and commit him to the jail of the said county of Rensselaer; there to remain until he shall deliver the said books and papers (*or either, or such of them as are withheld*), or be otherwise discharged according to law.

Witness, C. R. I., Justice of the Supreme Court, at the city of Troy, this tenth day of July, 1867.

Seal.

Signatures.

## No. 32.

## SEARCH WARRANT FOR SUCH BOOKS OR PAPERS WITHHELD.

*See ante, page 183.*

*The People of the State of New York, to the Sheriff of the County of Rensselaer, or to any Constable of any Town in said County:*

(*As in the form above to \*.*) And the undersigned being required by said complainant, A. B., to issue this warrant,—

Now, therefore, you are commanded, in the day-time, to search C. D.'s house, situated (*insert a particular designation or description of the said house, and of any other place to be searched*), for the said books and papers (*or either of them, as the case may be*), so withheld, and all other such books and papers as belonged to the said C. D., as supervisor as afore-said, in his official capacity, and which appertained to the said office of supervisor, and seize and bring them before the undersigned.

Witness, C. R. I., Justice of the Supreme Court, at the city of Troy, this tenth day of July, 1867.

Signature and seal.

---

 No. 33.

## OATH TO TOWN CLERK'S ACCOUNT.

*See ante, page 185.*

## RENSSELAER COUNTY, ss:

J. G. being duly sworn, says that he is town clerk of the town of Pittstown; that the items in the foregoing account by him presented are correct, and that the services charged therein have been in fact rendered or necessary to be rendered at this session of the board, and that no part thereof has been paid.

Sworn, etc.

J. G.

## No. 34.

## ORDER ALTERING SCHOOL DISTRICT.

*See ante, page 194.*

We, the undersigned, commissioner of common schools for the \_\_\_\_\_ district of Rensselaer county, supervisor and town clerk of the town of Pittstown in said county, having met at the house of \_\_\_\_\_, in said town, on the \_\_\_\_\_ day of \_\_\_\_\_, for the purpose of hearing and deciding the matter of the order made by such commissioner of common schools, on the \_\_\_\_\_ day of \_\_\_\_\_, altering school district No. 5, in said town, which order is as follows (*insert order*):

And having heard all the objections presented to said order, do hereby decide that said order be confirmed (or *vacated*).

Given under our hand the \_\_\_\_\_ day of \_\_\_\_\_ .  
 \_\_\_\_\_  
 Signatures.

## No. 35.

## CERTIFICATE OF TOWN AUDITOR.

*See ante, page 198.*

RENSSELAER COUNTY, }  
 Town of Hoosick. } ss:

We, the undersigned, composing the board of town auditors of said town, do hereby certify, that we have this day audited and allowed to E. F. (*commissioner of highways*), of said town, by whom the foregoing account has been presented to us, the sum of \$50, as and for his services as such commissioner (*insert if necessary*), and the disbursements necessarily paid out by him in the execution of his duty, up to and including the 3d day of March, 1869, and that we find a balance of \$23 to be due from said E. F. to the town of Hoosick.

Dated, etc. \_\_\_\_\_ Signatures.

## No. 36.

## ANNUAL ACCOUNT OF COMMISSIONERS OF HIGHWAYS.

*See ante, page 200.*

The undersigned, commissioners of highways of the town of Auburn, in the county of Cayuga, hereby render to the board of auditors of said town, their annual account for the year ending February 1, 1866 :

1. The highway labor assessed in said town for the year ending on the said first day of February, was *seven hundred and ten* days, and the highway labor performed in said town during the said year, was *five hundred* and eighty-nine days, as appears by the account rendered us by the several overseers of highways in said town.

2. The said commissioners have received during the said year, the following sums of money for fines and commutations under the statute relative to highways, to wit :

| Date. | From whom received. | On what account. | Amount. |
|-------|---------------------|------------------|---------|
|-------|---------------------|------------------|---------|

They have also received from other sources under said statute, etc.

3. The improvements which have been made on the roads and bridges in said town during the said year, are as follows : (*specify improvements.*) And the roads and bridges in said town are (*give state of them, and specify whether they are in good repair or otherwise.*)

4. The following improvements are necessary to be made on the roads and bridges in said town, to wit : (*specify necessary improvements.*)

5. The probable expense of making such improvements, beyond what the labor to be assessed this year will accomplish, is by us estimated at \$250.

Given under our hands, this tenth day of February, 1866.

Signatures, *Commissioners.*

## No. 37.

AFFIDAVIT TO BE ATTACHED TO ACCOUNTS OF OVERSEER OF  
POOR.*See ante, page 201.*

COUNTY OF RENSSELAER, ss :

E. F., the overseer of the poor in the town of Pittstown in said county, being duly sworn, says, that the foregoing is a just and true account of all moneys received and expended by him for the use of the poor, and that the said account is in all other respects just and true.

Sworn, etc.

E. F.

---

No. 38.

## VERIFICATION OF ACCOUNTS.

*See ante, page 211.*

RENSSELAER COUNTY, ss :

J. G., being duly sworn, says that the items in the foregoing account by him presented, are correct, and that the services and disbursements charged therein have been, in fact, made or rendered, or necessary to be made or rendered at this session of the board, and that no part thereof has been paid or satisfied.

Sworn, etc.

J. G.

---

No. 39.

## CERTIFICATE OF TOWN AUDITORS.

*See ante, page 212.*

We, the undersigned, board of town auditors, of the town of Pittstown, in the county of Rensselaer, do hereby certify that the following statement of the accounts audited by them at their annual meeting, held \_\_\_\_\_, is correct, viz. :

| Names.      | Nature of demand.        | Amount claimed. | Amount allowed. |
|-------------|--------------------------|-----------------|-----------------|
| John Brown  | Medical services .....   | \$50 50         | \$40 00         |
| John Doe .. | Commissioner of Highways | 70 20           | 60 00           |
| Total ..... |                          | .....           | .....           |

Dated.

Signatures.

## No. 40.

## ABSTRACT OF TOWN ACCOUNTS.

*See ante, page 213.*

Abstract of the names of all persons who presented accounts to be audited by the board of town auditors of the town of Schodack, on the 5th day of November, 1868, with the amounts claimed by each, and the amounts audited and allowed each, viz. :

|                       | Am't claimed.   | Am't allowed.   |
|-----------------------|-----------------|-----------------|
| H. P. Van Hoesen..... | \$63 03         | \$63 03         |
| Richard Packman ..... | 56 16           | 56 16           |
| Jacob S. Rector ..... | 42 00           | 42 00           |
|                       | <u>\$161 19</u> | <u>\$161 19</u> |

Dated Schodack, November 5th, 1868.

I hereby certify the foregoing to be a true copy of accounts audited by the town board, on file in my office.

Signature.



# LAWS RELATIVE

TO,

Assessors, Collectors and Town Clerks,

FOR 1870.

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NOTE 1, page 119.

*Payment of taxes by railroads.* It shall be the duty of the clerk of the board of supervisors of the several counties of this State (except New York and Kings counties) within five days after the making out or issuing of the annual tax warrants by the board of supervisors of their respective counties, to prepare and deliver to the county treasurer a statement showing the title of all railroad corporations in such county, as appears on the last assessment roll of the towns or cities in such county, the valuation of the property, real and personal, of such corporation in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in their county.

Any railroad company heretofore organized under the laws of this State, or that may be hereafter organized, may, within thirty days after the receipt of such statement by the county treasurer, pay the amount of tax so assessed or levied on their property, with one per cent fees on said tax, to the county

treasurer, who is hereby authorized and directed to receive such amounts and to give proper receipt therefor.

In case any railroad company shall fail to pay such tax within said thirty days, it shall be the duty of the county treasurer to notify the collector of all towns or cities in their county, in which said company is assessed, of such failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect said tax in the manner now provided by law, together with five per cent fees; but no town or city collector shall collect any tax levied or assessed upon the property of any railroad company in said counties by the supervisors of the county until the receipt of such notice from the county treasurer.

The several amounts of tax so received by the county treasurer, of and from railroad companies, shall be placed to the credit of the town or city for or on account of which the same was levied or assessed, and to the credit of the fund or funds to which the same is now or shall be hereafter pledged or appropriated by law, and the one per cent fees also paid shall be placed to the credit of the collector of said city or town; and in case such amounts shall exceed the sum due from said town or city, the surplus shall, on demand, be paid to the supervisor of said town or city, who shall receive, hold and disburse the same as if received from the collector of said town or city.

Nothing in this act shall be construed to prevent any railroad company from paying their tax to the

collector of towns or cities as now provided by law, nor shall the provisions of this act be construed to repeal or in any manner interfere with the provisions of chapter nine hundred and seven of the session laws of eighteen hundred and sixty-nine. Laws 1870, ch. 506.

NOTE 2, page 163.

*To destroy paid bonds.* Whenever a town has a public debt, consisting of bonds or other evidences of debt issued on the credit of said town, it shall be the duty of the supervisor thereof, and he is hereby directed and required, to make a report to the board of supervisors of the county at the next annual session thereof after the passage of this act, and at every annual session thereafter, of the amount of the public debt of his said town.

The said report shall be in tabular form, specifying the different acts under which the bonds or debts were issued, with the rate of interest thereon, the amount unpaid at the time of the election of such supervisor, and the amount of debt paid at the date of his said report, and coming due during his term of office.

The report so made to the board of supervisors shall be published in the annual report of the proceedings of said board.

It shall also be the duty of such supervisor, and he is also directed and required, at the expiration of his term of office, at the annual town meeting for the election of town officers, to make and present thereto a duplicate copy of his report of the public town

debt so made to the said board of supervisors, including and adding thereto the amount of bonds issued, and the amounts and interest paid, since the date of said report up to the day and date of his term of office, duly attested before a justice of the peace of his said town, and which said report shall be filed in the town clerk's office of the town, subject to the inspection, when required, of any elector thereof.

All such bonds, and coupons thereof, paid, shall be canceled and burned by the town auditors of the town, at a meeting thereof to be held for that purpose within ten days previous to the annual town meeting; and a record thereof shall be filed, signed by the said board, in the office of the clerk of said town.

Any supervisor or other officer neglecting or refusing to perform any duty imposed by this act shall be deemed guilty of a misdemeanor, and shall forfeit, upon conviction, the sum of two hundred and fifty dollars for such offense, and be imprisoned not exceeding sixty days. Laws 1870, ch. 552.

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